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STANFORD LAW LIBRARY

THE

Law of Wills, Codicils,

AND

REVOCATIONS.

WITH

PLAIN AND FAMILIAR INSTRUCTIONS FOR

Executors, Adminiſtrators, Deviſees, and Legatees.

INCLUDING GREAT VARIETY OF

FORMS OF WILLS AND CODICILS,

Adapted to the Circumſtances of Perſons of all Ranks and Situations, who would wiſh to deviſe or bequeath their Property legally and ſecurely, and prevent vexatious Law Suits among their ſurviving Relatives and Friends. Including the modern Deciſions and Acts of Parliament on theſe Subjects,

DOWN TO MICHAELMAS TERM, 1800.

TO WHICH IS ADDED,

A CLEAR AND DISTINCT ACCOUNT OF THE

LAW'S DISPOSAL OF THE ESTATES

Of thoſe who die Inteſtate or without a Will.

CALCULATED FOR THE

USE OF THE PUBLIC IN GENERAL,

AS WELL AS

THE PROFESSORS OF THE LAW.

With ample Inſtructions for obtaining PROBATE of WILLS, and LETTERS of ADMINISTRATION.

THE SECOND EDITION WITH ADDITIONS.

BY EARDLEY MITFORD, ESQ. CONVEYANCER.

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FOR

J. STRATFORD, No. 112, HOLBORN-HILL.

1800.

PREFACE.

IT is a melancholy Truth, that the improper penning or Execution of Wills creates a Multiplicity of Suits in the Courts at Weſtminſter Hall: That this ſhould be the Caſe cannot be Matter of Surprize, when it is conſidered that many Perſons who have very aſſiduouſly and carefully laboured to accumulate Wealth, have neglected, almoſt to the laſt Moment of their Exiſtence, to attend to the proper Diſpoſal of it. When a ſpeedy Diſſolution is pronounced inevitable by the Phyſician, the diſmayed Patient perhaps thinks ſeriouſly of making his Will, and if his life is not too ſuddenly terminated, it is then prepared and executed; but, on Account of the extreme Haſte in which it has been produced, ſome of the neceſſary Forms may have been omitted; or inſurmountable Blunders may have been committed, which open a Field of Litigation for his ſurviving Relatives or Friends.

Prudent Perſons will not put off ſo eſſential a Buſineſs as that of making their Will till Death ſhall aim his inexorable Shaft: They will conſider that fatal bodily diſorders too often affect and impair the Underſtanding; and though, according to the common Acceptation of the Terms, they may be of *ſound and diſpoſing mind, &c.* they certainly will be leſs able to diſpoſe of their Property in the Hurry and Confuſion of expiring Life, than when compoſed in the calm Moments of Health and Deliberation.

Though moſt men are anxious to acquire Wealth, they are in general extremely ignorant with regard to the Law of Wills: They know not that a Will and a Deed have in ſome Caſes a different Operation; and that if "there "are two Clauſes in a Will ſo totally repugnant to each "other that they cannot ſtand together, the *latter* ſhall "be received, and the *former* rejected; wherein it differs "from a Deed; for there, of two repugnant Clauſes the "*former* ſhall ſtand; which is owing to the different Na- "tures of the two Inſtruments; for the *laſt Will* and the "*firſt Deed* is always moſt available in Law." This ſingle Inſtance, it is preſumed, will ſufficiently point out the Neceſſity of acquiring a competent Knowledge of the Law of Wills: It is a Duty incumbent on thoſe poſſeſſed of Property, to learn like faithful Stewards, how to diſpoſe of that Property legally, and to the proper Objects.

That wealthy Perſons ought always to have a Will by them duly made and executed, cannot be conteſted: Without that neceſſary Step, their conduct is highly criminal; as Death may ſurpriſe them in a Moment, and deprive them of the Ability to do that Juſtice which the Laws of God and Man require of them. The Editor, he humbly hopes, has given ſuch Inſtructions, in the following Sheets, as will enable his intelligent Readers to know and perform what ſo eſſentially concerns them.

He has endeavoured to give ample Directions to Executors, Adminiſtrators, Deviſees, and Legatees; and a full and diſtinct Account of the Law's Diſpoſal of the Eſtates of thoſe who die Inteſtate.

Gray's-Inn:
Oct. 1, 1800.

The Law of Wills.

I. *General Definition of a Will*

A WILL or teſtament is defined to be "the legal declaration of a man's intentions of what he *wills* to be performed *after* his death;" for a will or teſtament cannot take place till after the death of the teſtator. *Swinb. p.* 1, *f.* 5. *Carth.* 38. What is a will or teſtament.

The perſon who makes a will or teſtament is called a *teſtator*; he who dies without a will is termed in law an *inteſtate*. Teſtator and inteſtate what.

A will and teſtament, ſtrictly ſpeaking, are not words of the ſame meaning. A will is properly limited to lands, and a teſtament only to perſonal eſtate; and the latter requires executors, who are named, to take care and ſee it performed, 1 *Inſt.* 111. *Shep. Abr. p.* 4. Will and teſtament how diſtinguiſhed.

A gift of lands or tenements by will is called a *deviſe*; and the perſon to whom they are given a *deviſee*.

The words *will* and *teſtament* are indeed generally uſed indiſcriminately; when they are to be underſtood otherwiſe, the context will ſhew. Sometimes uſed indiſcriminately.

The word *demiſe* ſeems moſt properly applicable to the diſpoſition of *lands* by *will*; and *bequeſt* or *legacy* to that of *perſonal eſtate*. *Burn's Eccl. L. title Wills.*

Wills diſpoſing of lands are regulated by ſeveral acts of parliament, and are a conveyance unknown to the old common law, which permitted a man only to diſpoſe of his goods or perſonal property; but in a courſe of time the words became applied indifferently to a diſpoſition of lands or goods, which are frequently and continually diſtributed and deviſed at the ſame time by the will. Wills by common law and ſtatute.

A bequeſt of goods and chattels is termed a *legacy*, and the perſon to whom they are bequeathed a *legatee*.

The deviſe of land by will is conſidered as merely a ſpecies of conveyance; whence the following diſtinction is founded Lands purchaſed after making a will.

founded between ſuch deviſes and diſpoſitions of perſonal eſtate, that a deviſe of a man's goods and perſonal property will operate upon all ſuch perſonal eſtate as the maker of the will dies poſſeſſed of, at whatever diſtance of time he may die after making the will: but a deviſe of freehold lands, or real eſtate, will only operate on ſuch eſtates as were his at the time of executing and publiſhing his will; therefore freehold lands purchaſed *after* making the will, cannot paſs under any deviſe in that will, unleſs it ſhall have been legally and formally republiſhed ſubſequent to the purchaſe or contract, the publication being conſidered in law as making a new will.

There are two ſorts of wills or teſtaments; firſt *written*, and ſecondly *verbal*, or made by word of mouth. The latter is called a *nuncupative* will.

A nuncupative or verbal will.

A nuncupative or verbal will is where the teſtator, without any writing, declares his will before a ſufficient number of witneſſes, and this can extend *only to perſonal eſtate*; for no real eſtate can paſs by the will unleſs it is written and properly atteſted.

As theſe kind of wills are liable to great impoſitions, and may occaſion many perjuries, they are not ſo common as they formerly were: they are much diſcountenanced by the ſtatute 29 *C. II, c.* 3 *ſ.* 19 (commonly called the Statute of Frauds) which enacts, that, for the preventing fraudulent practices, No nuncupative will ſhall be good where the eſtate thereby bequeathed ſhall exceed the value of 30*l.* that is not proved by the oaths of three witneſſes, at the leaſt, who were preſent at the time of pronouncing the ſame, and bid by the teſtator to bear witneſs that ſuch was his will, or to that effect.

Muſt be proved by three witneſſes.

And by 4 *Ann. c.* 16, *ſ.* 14. it is enacted and declared, That all ſuch witneſſes, as are and ought to be allowed to be good witneſſes upon trial at law by the laws and cuſtoms of this realm, ſhall be deemed good witneſſes to prove any nuncupative will, or any thing relating thereto.

And in his laſt ſickneſs.

Alſo by the ſaid above-mentioned ſtatute of 29 *C. II, c.* 3, *ſ.* 19. nor unleſs ſuch nuncupative will were made in the time of the laſt ſickneſs of the deceaſed, and in the houſe of his or her habitation or dwelling, or where he or ſhe has been reſident for ten days, or more, next before the making of ſuch will, except where ſuch perſon was ſurpriſed or taken ſick, being from his own home, and died before he returned

returned to the place of his or her dwelling. 29 *C. II, c.* 3, *ſ.* 19.

That after ſix months paſſed after the ſpeaking of the teſtamentary words, no teſtimony ſhall be received to prove any will nuncupative, except the ſaid teſtimony, or the ſubſtance thereof, were committed to writing within ſix days after the making of the ſaid will. *ſ.* 20. Muſt be committed to writing.

Nor ſhall ſuch will be proved till fourteen days after the death of the teſtator, nor till proceſs hath firſt iſſued to call in the widow or next of kin to conteſt it if they think proper. *ſ.* 21. Not to be proved till fourteen days after teſtator's death.

No written will ſhall be revoked or altered by any ſubſequent nuncupative one, unleſs the ſame be, in the life-time of the teſtator, reduced to writing, and by him read over and approved, and unleſs the ſame be proved to have been done by three witneſſes at the leaſt. *ſ.* 22. Nuncupative will not revoke another will.

But any ſoldier, in actual military ſervice, or any mariner or ſeaman being at ſea, may diſpoſe of his moveables, wages, and perſonal eſtate, as before the making of this act. Soldiers and ſailors not affected by this act.

It ſeems neceſſary to repeat that this will extends only to perſonal eſtate: that the teſtamentary words by which it is made muſt be ſpoken with an intent to bequeath, not any looſe idle words in the ſick perſon's illneſs; for he muſt require the by-ſtanders to bear witneſs of ſuch his intention: that the will muſt be made at home among his family or friends, unleſs by unavoidable accident, to prevent impoſitions from ſtrangers: that it muſt be in his *laſt* ſickneſs, for if he recovers he may alter his diſpoſition, having time to make a written will: that it muſt not be proved after ſix months from the making, unleſs it were put in writing within ſix days from that time; nor yet too haſtily, as not till fourteen days after the death of the teſtator, nor till legal notice hath been given to his widow or next of kin, that they may conteſt the ſame, if they ſhould be ſo inclined. Obſervation on ſtatute 29 *C. II*, reſpecting nuncupative wills.

It is properly remarked, by Sir William Blackſtone, that the legiſlature has provided againſt any frauds in ſetting up nuncupative wills, by ſo numerous a train of requiſites, that the thing itſelf is fallen into diſuſe, and is hardly ever heard of, but in the only inſtance where favour ought to be ſhewn it, where the teſtator is ſurpriſed by ſudden and violent ſickneſs. 2 *Black. Comm.* 501. Further obſervations by Sir William Blackſtone.

II. *Who are capable of making a Will.*

All persons not specially prohibited.

Regularly all persons have full power to dispose of their property by will, unless under some *special* prohibition by our laws, or by custom; and such prohibitions are generally upon three accounts: First, for want of sufficient discretion in the person making the will; secondly for want of sufficient liberty and free will: and thirdly, on account of criminal conduct.

Aliens.

It may be necessary, however, first to mention a case which does not strictly come under either of these heads, unless on some occasions it might be supposed proper to be referred to the third: An *alien*, while living under the *English* government, may obtain money, goods, and personal property; and may make a will, and dispose of such property as he pleases; contrary to the ancient custom in *France*, where the king, at the death of an *alien*, was entitled to all he was worth in that kingdom; a custom repealed in the reign of the late unfortunate *Louis* XVI. A distinction is made in some of the law books, between alien friends and alien enemies: but in the case of an alien, the subject of a state at war with *England*, if he lives here and trades, and is not guilty of any unfriendly act, he is permitted to dispose of his goods and money as freely as any subject; and this, under the idea that he has the king's licence for staying in the kingdom, and is therefore in some degree entitled to the protection and privilege of a subject. But an alien (friend or enemy) not being capable of acquiring any right in land for his own benefit, can never, therefore, have any real estate to dispose of. Yet it seems undisputed, that an *alien* may be a *devisee* even of lands whatever the further effect of his taking such lands may be. *Powell on Devises.*

Some doubts have arisen, respecting the power of an alien, during a *temporary* residence here, to devise his property in the funds. It seems that such a devise is certainly good, unless the alien be positively restrained therefrom by the established laws of his own country, or by his own pre-contract.

Infants. Will made by an infant noteffectual in law.

In the first class of prohibitions are considered,

Infants, whose qualification arises from infancy, or being under the age of twenty-one years, and is founded on the supposed want of discretion in persons at so early a period of

of life, to diſpoſe of their property in a rational and proper manner: on which account the law, in compaſſion to the inferiority of their judgment, and to prevent their being ſeduced by deſigning perſons to diſpoſe of their eſtates contrary to their real intention, has utterly diſabled them from alienating their inheritance, till they are arrived at an age in which their underſtanding may be preſumed to be more ripe and mature: it is therefore enacted by the 34 *H. VIII, c.* 5, *ſ.* 14, that a will or teſtament made of any lands, manors, tenements, or hereditaments, by a perſon under the age of twenty-one years, ſhall not be taken to be good or effectual in law.

Male infants of fourteen, and females of twelve, may diſpoſe of perſonal eſtate;

The law, however, allows that a male infant of the age of fourteen years or upwards, and a female of twelve years or upwards, are capable of making a will, reſpecting only goods, money, and other perſonal eſtate: but as the eccleſiaſtical court is the judge of every teſtator's capacity, and decides on diſputes reſpecting the validity of wills relating to perſonal eſtates, the diſcretion of the perſon making the will may be diſputed there, and his capacity of deviſing, whatever may be his age. 2 *Black. Com.* 497.

But no objection can be made to wills of infants above theſe ages diſpoſing of perſonal eſtates, *merely* on account of their youth.

but not under thoſe ages.

No cuſtom can be good to enable any perſons to make a will *under* the reſpective ages of fourteen if males, and twelve if females.

Age to be pleaded.

In pleading a will by an infant, a certain age muſt be ſtated, to enable the court to judge whether it be an age of diſcretion.

In reckoning the age of an infant, the day of the birth muſt be *excluded*. 1 *Sid.* 162.

If an infant hath attained to the laſt day of fourteen or twelve years, the teſtament by him or her in the very laſt day of their ſeveral ages aforeſaid, is as good and lawful, as if the ſame day were already then expired. *Swinb.* xi. 2.

General obſervations reſpecting wills.

By a will made with good advice, or by the aſſiſtance of a perſon ſufficiently verſed in the law, the teſtator's eſtate may be given and diſpoſed of ſo as not to leave the leaſt room for diſpute or litigation; yet if the will be not made with good advice, it may be attended with as bad conſequences as if the teſtator had died inteſtate, and left his

eſtate to the diſpoſition of the law; and this is obvious to every perſon who has been converſant with the books of reports, or hath attended the courts of juſtice; and it is obſerved by Sir William Blackſtone, (in his *Com.* 1, 7,) that an ignorance of the forms which the policy of the laws hath made neceſſary for the wording of laſt wills and teſtaments, and of the atteſtation, muſt be of dangerous conſequence to ſuch as compile their own teſtaments without any aſſiſtance; and that thoſe who have attended the courts of juſtice, are the beſt witneſſes of the confuſion and diſtreſſes that are thereby occaſioned in families, and of the difficulties that ariſe in diſcerning the true meaning of the teſtator, or ſometimes in diſcovering any meaning at all; ſo that in the end his eſtate may be veſted quite contrary to his intentions; becauſe he has perhaps omitted one or two formal words, which are neceſſary to aſcertain the ſenſe with indiſputable legal preciſion, or has executed his will in the preſence of fewer witneſſes than the law requires. *Lovelaſs*, 125.

It hath been preſumed, that where a will has been made contrary to the intereſt and inclination of ſome of the teſtator's family or relations, it may unknown to him have been deſtroyed before his death, or concealed afterwards; and thereby notwithſtanding the care he may have taken to diſpoſe of his eſtate and effects, the ſame have been left to the diſpoſition of the law: for preventing ſuch misfortune we may obſerve Lord Coke's advice; which is to make two parts of the will, and to leave one part thereof in the hands of a friend; either of which parts may be proved, and hereby the teſtator's will may be ſecured; and if he ſhould have a mind to cancel it at any time before his death, this will in no wiſe prevent or hinder him from ſo doing; no more than if there was only one part. For the cancelling of one part when the ſame is done with an intention to deſtroy the will, is as the cancelling of both, and a good revocation of the whole will. 3 *Co. Rep.* 36.

Where the eſtate and effects are of any conſiderable value, this method of making the will in two parts, and leaving one part thereof with a friend, is commonly uſed.

Ideots incapable of making a will.

An ideot, or natural fool, is one who, notwithſtanding he may be of lawful age to make a will, yet has ſo little ſenſe as to be unable to number to twenty, or to tell his age, or to anſwer any common queſtions, by which means

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it may plainly appear that he has not reason to discern what is to his advantage or disadvantage; and who, from his want of natural parts, is incapable of being informed or instructed by any other; and such an ideot cannot, at any time, make a will or testament, nor dispose either of his lands or goods. *Law of Test.* 41. 4 *Burn's Eccles. Law*, 44.

Disabled by statute.

The disqualification of idiocy is founded on the natural incapacity of such a one to exercise that degree of understanding which constitutes volition. An ideot, or natural fool, is one who has had no understanding from his birth, and is therefore deemed in law (founded on experience) never likely to attain any; for which reason, and to prevent their alienating their estates, and disinheriting their heirs, the statute of 17 *Ed. II, c.* 9, directs, in affirmance of the common law, that the king shall have ward of the lands of natural fools during their lives, taking the profits thereof, and providing them with necessaries; and after the death of the ideot, shall render the estate to the heir at law. *Fitz. N. Brev.* 233.

Therefore if any one attempts to call in question, or overthrow the will, on account of any supposed madness, or want of memory in the testator, he must prove such impediment to have existed previous to the date of the will; but people of mean understanding and capacities, neither of the wise sort nor of the foolish, but indifferent betwixt both, even though they rather incline to the foolish sort, are not hindered from making their wills. The law will not scrutinize into the depth of a man's capacity, particularly after his death, if he was able to conduct himself reasonably in the common course of life; as it might be opening a wide door to support pretensions of fraud or imposition on the testator. *Burn's Eccl. L.*

And if a person of a sound mind make his will, this shall not be revoked or affected by his subsequent infirmity, 4 *Co.* 61.

But a man is not an ideot, who has any *glimmering* of reason, so that he can tell his age, know his parents, or such like common matters. *Fitzh. N. Brev.* 233.

And every person making a will is presumed to be of sound understanding, until the contrary be proved; so that the proof lies on the other side. *Swinb.* 72. 8 *Co.* 147.

Persons grown childish.

Persons grown childish, either through old age or any infirmity or distemper, are during the continuance of such incapacity, incapable of making a will. *Swinb. p.* 11, *f.* 1; 6 *Co. Rep.* 23.

Lunatics,

Insane persons.

Lunatics, during their madneſs or inſanity, cannot make a will or teſtament, nor diſpoſe of any thing thereby, on account of their utter incapacity of knowing what they are doing. The law requires, in the makers of wills, integrity, ſoundneſs, and ſanity of mind, the health of the body only not being regarded.

Upon proof of the teſtator's inſanity, a will has been ſet aſide after forty years poſſeſſion under it, and that to the prejudice of a purchaſer 8 *Vin. Abr.* 169.

But if a mad perſon has intervals of calm reaſon, and, during the time of ſuch intervals, poſſeſſes a ſound and diſpoſing memory and underſtanding, he may make his will, which will be good in law. 4 *Burn's Eccleſ. Law*, 44.

Becoming ſo after making a will.

If a perſon of ſound memory makes his will, and afterwards becomes inſane, this is no revocation of the will; yet a bill will not lie in the life-time of the lunatic, to eſtabliſh the teſtimony of the witneſs *in perpetuum rei memoriam* to ſuch a will. *Godolph.* 26. 4 *Co.* 126. 1 *Vern.* 105.

But diſabilities of *infancy*, *inſanity*, *idiocy*, *coverture* or *dureſs*, if exiſting at the time of making the will, render it abſolutely void, and it cannot be validated by any confirmation of the teſtator, after they be removed. 11 *Mod.* 157.

Drunken perſons.

A drunken man, when ſo far intoxicated as to be deprived of his reaſon and underſtanding, cannot make his will during his drunkenneſs; for it is requiſite, when the teſtator makes his will, that he ſhould be of ſound memory and underſtanding. *Swinb. p*, 11. *ſ.* 1.

Perſons born blind, deaf, and dumb.

Perſons who are born blind, deaf, and dumb, are incapable of making a will, ſo likewiſe are thoſe who are only deaf and dumb by nature; unleſs it manifeſtly appears clearly that ſuch a perſon underſtands what a will means, and that he has a deſire to make a will; for if he hath ſuch underſtanding and deſire, then he may, by ſigns and tokens, declare his intentions. *Law of Teſt.* 4 *Burn's Eccleſ. Law*, 54.

Perſons born deaf, dumb, and blind, having never had the neceſſary inlets of underſtanding, muſt unavoidably be too deficient to have any rational will of their own, and are incapable of diſpoſing of their property by will. 2 *Black. Com.* 496.

A blind perſon.

A blind perſon may make a nuncupative or verbal will, by declaring his intentions before a ſufficient number of witneſſes,

neſſes, and he may alſo make a will in writing, provided ſuch will be read to him before witneſſes, and in their preſence acknowledged by him for his laſt will; but if a writing ſhould be delivered to a blind man, and he *not* hearing the ſame read, acknowledged it for his will, this would not be ſufficient; for it might happen, that if he had heard it, he would not have acknowledged it for his will. The beſt method, therefore, in ſuch a caſe, is, that the will be read over to the teſtator, and approved by him, in the preſence of *all* the ſubſcribing witneſſes; and although the law does not expreſsly require this regulation, in reſpect to the will of blind perſons, yet a court of juſtice will demand ſatisfactory proof of ſome kind, that the identical will was read over to him, though it was not in the preſence of the witneſſes; it is therefore good policy to let all the ſubſcribing witneſſes be preſent at the reading over ſuch will, as in caſe of any diſpute, which may be more likely in ſuch extraordinary circumſtances, they will be moſt capable of affording compleat ſatisfaction to the minds of a judge and jury. 4 *Burn's Eccleſ. Law*, 55.

The ſame precautions, neceſſary for authenticating a blind man's will, ſeem requiſite in the caſe of a perſon who cannot read; for though the law, in other caſes, may preſume that the perſon who executes a will knows and approves the contents of it, yet that preſumption will ceaſe where, through defect of education, he cannot read, or is by ſickneſs incapacitated to read the will at that time. *Id.* One who cannot read.

Under the ſecond head of perſons incapable of making a will, are thoſe who have not ſufficient liberty and free will; married women come under this deſcription.

A married woman (or a feme covert) is reſtrained and prevented from deviſing any land or real eſtate whatſoever; being particularly excepted out of the act of 34 and 35 *H. VIII. c.* 5, enabling other perſons to diſpoſe of their lands and tenements by will; and it is a general rule that ſhe cannot make any will, even of goods or perſonal eſtate, without the licence or conſent of her huſband: becauſe by the law, as ſoon as a man and woman are married, all the goods and perſonal eſtate of what nature ſoever, which the wife had at the time of the marriage, or may acquire after, belong to the huſband, by force of the marriage, which impowers him to make ſuch part of them his own as are not abſolutely veſted in him immediately by the marriage; and therefore it would be an incon- A married woman.

ſiſtency in the law to give her a power of defeating that rule, by bequeathing thoſe goods and chattels to another. 4 *Co.* 51.

May make a will or *appointment*, by conſent of her huſband.

Yet, by the licence or conſent of her huſband, ſhe may make a will, and diſpoſe of goods and other perſonal effects; and it is therefore common for the huſband, previous to his marriage, to covenant with the parents or friends of the intended wife to allow her the licence or privilege of making a will, and to diſpoſe of money or legacies to a certain value, and to pay what ſhe ſhall appoint, not exceeding ſuch value; and in that caſe, if after the marriage, and during the continuation of it, ſhe makes any writing, purporting to be her will, and diſpoſes of legacies to the value agreed on, though in ſtrictneſs of law ſhe cannot make a *will* without her huſband, but only *ſomething like a will*, yet this ſhall be good as an *appointment*, and the huſband is bound by his bond, agreement, or covenant, to allow the execution of it.

Or an aſſent.

Such *licence*, however, ſays Sir William Blackſtone, is more properly an *aſſent*; for unleſs it be given to the particular will in queſtion, it will not be a complete teſtament, even though her huſband have previouſly given her permiſſion to make a will. 2 *Com.* 497. *Str.* 891.

But ſuch appointment or licence will be ſufficient to bar the huſband's general right of adminiſtering to his wife's effects, and adminiſtration ſhall be granted to the perſon ſhe ſhall appoint, with ſuch teſtamentary paper annexed. *Ib.*

Where the huſband is baniſhed.

If a married woman's huſband be baniſhed beyond ſea for life, ſhe may make a will, and act in every thing as if ſhe was unmarried, or as if the huſband was dead. 2 *Ver.* 104.

Queen conſort.

The queen conſort is exempted from any of the above-mentioned reſtrictions: ſhe may diſpoſe of her chattels by will, without the conſent of her huſband. *Co. Litt.* 133.

Married woman, having pin-money, may bequeath or take the ſavings.

It has been determined, that a married woman having any pin-money or ſeparate maintenance, may bequeath her ſavings out of ſuch allowance by will, without any licence or conſent of her huſband. *Prec. Chan.* 44.

And if ſhe ſurvives him, ſhall have it herſelf, and the ſame ſhall not be liable to her huſband's debts. 4 *Burn's Eccleſ Law*, 49.

Huſband may bequeath to his wife.

A married woman, although ſhe cannot be a grantee to her huſband, as a man cannot grant any thing by deed to

his wife, or enter into covenant with her; for that would be to ſuppoſe her ſeparate exiſtence; but a woman may be attorney for her huſband, as that implies no ſeparation; and a huſband may bequeath any thing to his wife by will; but that cannot take effect till the coverture is determined by death. 1 *Black. Com.* 442.

Bequeſts to married women.

When any eſtate or property is intended for a married woman, it is generally deviſed or bequeathed to ſome perſon in truſt for her, or to be for her ſole and ſeparate uſe, with directions that her receipt alone ſhall be a ſufficient diſcharge for the ſame; as thereby to prevent what is given being ſubject to the huſband's controul. If any real eſtate is deviſed to her in fee ſimple, and without any reſtriction, it immediately veſts in her, on the teſtator's death, and will have the ſame effect as to the huſband's curteſy, and being conveyed by virtue of a fine. And if any legacy or perſonal eſtate is given to a married woman abſolutely without any reſtriction, it ſhall be as if the ſame were given to the huſband.

A married woman executrix.

If a married woman is executrix to ſome other perſon, and in that right has goods and chattels, theſe do not become the property of the huſband by marriage, becauſe ſhe has them not to her own uſe, but as repreſenting the perſon of another; and therefore, in this caſe, the may, for the continuation of the executorſhip only, and for no other purpoſe, make an executor, and conſequently a will, without the conſent of her huſband; but ſhe cannot either in her life time, or by her will, diſpoſe of the goods which ſhe is thus poſſeſſed of in right of another, any other than as by law ſhe is required to do as executrix.

Women's will before marriage.

If a woman makes a will, and afterwards marries, and dies during the life of her huſband, yet being at the time of her death incapable by law of deviſing, becauſe her huſband is then living, the will is void; for it is neceſſary, in order to make her will of force in law, that ſhe had ability to make a will; not only at the time of making thereof, when the will received its being, but alſo at the time of her death, at which time only any will can receive its ſtrength and confirmation. 4 *Rep.* 60: 2. *P. Wm.* 624.

Making a will before marriage.

A will is rendered void which is made by a perſon in conſequence of any threats made uſe of to him, whereby he is induced, through fear of injury, to make ſuch a will as he would not otherwiſe have wiſhed to do.

Restraint. But if the testator afterwards, when there is no excuse of fear, do ratify and confirm his will, the same is then good in law. 4 *Burn's Eccl. L.* 53.

Where it appeared that a man in his last sickness was obliged to make his will, to procure quiet from the extreme importunity of his wife, it was held to have been made under restraint, and declared void. *Sty.* 427. 1 *Ch. Rep.* 66.

Criminal conduct occasions a third kind of disability.

Traitors. Traitors, whose lands and tenements, from the commission of the offence, and goods and chattels from the time of conviction, are forfeited to the king, have no longer a property in either. 4 *Burn's Eccles. Law.* 54. *Swinb.* 88.

Traitors are not only deprived of the privilege of making any kind of last will, from the time of being convicted and found guilty; but any will made before does by reason of such conviction, become void, in respect both of goods and lands.

Of forfeiture before and after conviction. There is this difference between the forfeiture of lands or real estate, and the forfeiture of goods and chattels. The *former* has relation back to the time of the fact committed, so as to avoid all intermediate charges; the *latter* has no relation backward; so that those only which a man hath at the time of conviction shall be forfeited; therefore a traitor or felon may sell any of his chattels, real or personal, between the fact and conviction; yet if they are colluſively parted with, merely to defraud the crown, the law (and particularly the statute 13 *Eliz. c.* 5.) will reach them. 4 *Black. Com.* 375, 388.

Felons. A felon, or one guilty of petit treason, lawfully convicted, cannot make a will, or other disposition of goods or lands, because the law has disposed thereof already, all his goods being forfeited to the king. *Plow.* 258.

A pardon however, restores him to his former estate and capacity of making a will.

Gavelkind lands. But Gavelkind lands are not forfeited for felony. *Rob. Gavel.* 75.

Felo de se, or suicide. A person who wilfully kills himself, called a *felo de se*, has also forfeited his goods and chattels to the king; but lands and other real estates, devised by him, are not subject to forfeiture, a suicide not being attainted as a felon. 4 *Black. Com.* 386. *Plow.* 261.

Standing mute. Obstinately standing mute on arraignment, where a person is indicted for felony, amounts to a confession, and will

have

have the same effect as if the prisoner had been convicted by verdict or confession of his crime. 4 *Black. Com.* 329.

Gravelkind lands, though the ancestor be hanged, are not forfeited for felony.

Outlawed persons being out of the protection of the laws, and their goods and chattels forfeited to the king, they are consequently disabled to dispose of their personal property, so long as the outlawry subsists; but of their lands they may dispose by will, as they are not forfeited by the outlawry. 2 *Black. Com.* 499. Outlawed persons.

Papists were, till lately, under many disabilities in respect to taking lands either by purchase or descent; but now, by their complying with the statute of 18 *G. III, c.* 60, and taking the oath therein prescribed, those disabilities are removed: and by the 31 *G. III, c.* 32, various other disabilities, to which they were subject, are likewise removed by their complying with this statute, and taking the oath herein prescribed. Papists.

The spiritual or ecclesiastical court has jurisdiction of fraud or deception relating to a will of *personal estate*, and can examine the parties by allegation concerning such fraud and deceit, and if the will was falsely read to the testator, then it is not *his will*; but in the case of a *real estate*, a will cannot be set aside even by a court of equity, for fraud or imposition, but must be tried at law on the question, whether the testator did or did not in fact devise, the fraud or imposition in this case being a matter proper for a jury to enquire into. *Bro. P. C. Bransby, v. Kerridge.* Of frauds respecting wills.

It is not material in what matter or stuff, whether in paper or parchment, nor in what language, whether in *Latin*, *French*, *Dutch*, or any other tongue, or in what hand or letters, whether in secretary hand, Roman hand, or court hand, or in any other hand, a will be written, so that it be fair and legible, that it be read and understood; neither is it material whether the same be written at large or by notes or characters usual or unusual, as XX. for twenty, or when the figure 1 is used instead of the letter *A.* if it be usual in the testator's writing, or the like; for the will is good notwithstanding. So also, if some words be omitted, or an improper sentence used, when the intent and meaning is apparent; as where a man says, I make my wife of this my last will and testament, leaving out the word executrix, yet the will is good; and this shall be understood In what language, &c. a will shall be written.

derſtood. But if it be ſo done as it cannot be read; or by reading, the mind of the teſtator cannot be known, then the will is void and of no force, in like manner as a noncupative will is when the words ſpoken are ſo ambiguous, obſcure, and uncertain, that thereby the meaning of the teſtator cannot be known or underſtood. *Swin. part 4, ſect. 28.*

No ſtamp duty. The legiſlature (wiſely conſidering that a perſon might be ſeized with a dangerous diſorder, at a conſiderable diſtance from where any ſtamps could be procured) has impoſed no ſtamp-duty upon wills, till after the death of the teſtator.

III. *What may be diſpoſed of by Will.*

Perſonal eſtate. All perſonal eſtate, as goods and chattels of every deſcription, may be bequeathed by will: and not only thoſe which a man poſſeſſes at the time of making his will, but thoſe which he may afterwards acquire, will alſo paſs.

Things in action. Things in action, as debts and other monies, *&c.* due to a man, but not in his poſſeſſion, being perſonal property, may be diſpoſed of by will, though by the common law they cannot be granted by deed in the party's life-time. *Perk 511.*

Deviſing money on mortgages. Where any one has money owing to him by mortgage, he may deviſe it to be paid when it becomes due. *Burn's Eccl. 1 Inſt. 209.*

Or preſentation. The right of preſenting to the next avoidance, or the inheritance of an advowſon of a benefice, may be deviſed. *Powel on Deviſes.*

Or next turn. And a deviſe of the next *turn*, or preſentation, carries the next turn of preſenting abſolutely to the deviſee, and not merely the right of getting himſelf preſented. *2 Black. Rep. 1240.*

Where there is an agreement to purchaſe lands. If a man has agreed to purchaſe an eſtate, and the buyer and ſeller enter into articles for the purchaſe, and the buyer dies, having by his will deviſed the land ſo agreed to be purchaſed, before any deed to convey the ſame is made to him; the land will, in equity, paſs to the deviſee, the ſeller only ſtanding as truſtee for him, and whom he ſhould appoint, till a regular conveyance be executed. *2 Vern. 679, 1 Atk. 573.*

A leaſe for any number of years, determinable upon a life or lives, that is, if ſuch or ſuch perſons live ſo long, or a leaſe for 500 or 1000 years; or any other term abſolute,

lute, may be given and diſpoſed of by will, and are part of a man's perſonal eſtate. *Burn's Eccl. L.*

Corn growing on the land of tenants for life, &c. at the time of his deceaſe, may be bequeathed by will. Corn growing.

And by the 20 *H. III*, *c.* 2, the dower-crops of widows may in like manner be bequeathed. Dower crops.

Bonds and obligations, and the like; and in general whatever will go the executor of the deceaſed, in right of his executorſhip, will paſs by the teſtator's will. *Perk.* 527.

By 20 *H. VIII*, *c.* 11, if the parſon or incumbent of a living, before his death, has cauſed any of his glebe lands to be manured and ſown at his own expence, with any corn or grain, he may by his will deviſe ſuch corn, and all the profit of it, growing on the glebe land ſo manured and ſown: and if a man is poſſeſſed of land for the term of his life only, and the land after his death deſcends to his heir, yet he may deviſe the corn growing on the land at the time of his death, away from the heir, to ſome other perſon, although he has it not in his power to deviſe the land whereon it grows. Incumbent may diſpoſe of his glebe.

So if a man has lands in right of his wife, or is tenant by the curteſy of lands, and ſows them with corn, he may deviſe the corn growing on the lands at his death, and the deviſe is good, and the wife, though entitled to the land, ſhall not have the corn. If a man thus poſſeſſed of lands in right of his wife, lets them to another who ſows the ground, and afterwards the wife dies, the corn not being ripe, yet in this caſe the perſon to whom the lands were let is entitled to the corn, and may deviſe it notwithſtanding his eſtate and intereſt in the land is determined. Lands held in right of a wife.

Where two wills are made, and neither of them dated, the maker is declared to have died inteſtate, it being impoſſible to aſcertain which was the laſt will. Two wills not dated.

As to real eſtate, by ſtatute 34 & 35 *H. VIII*, *c.* 5, and by virtue of the ſtatute 12 *H. II*, *c.* 25, all perſons (except married women, infants, ideots, and perſons of nonſane memory) are empowered to diſpoſe by will in writing of the whole of their landed property (except their copyhold tenements) to whom they think fit, unleſs it be to bodies corporate; and that even to the total diſinheriſon of the heir at law, notwithſtanding that erroneous opinion which ſome entertain of the neceſſity of leaving the heir a ſhilling, or ſome other expreſs legacy, in order to diſinherit him effectually. 2 *Black. Com.* 375, 376. Real eſtate.

Thus

Thus has the legiſlature enabled perſons to diſpoſe of their landed property to any perſon or perſons, except it be to bodies corporate.

Trees, &c. But trees, and other things fixed to the freehold or *heir-looms*, which by cuſtom go to the heir with the houſe, are not deviſable but by him who has the fee ſimple. 4 *Co.* 64. 1 *Inſt.* 185.

Although the perſonal eſtate of the wife becomes the property of the huſband immediately on marriage, as he is thereby enabled to make all debts due to her, and bonds for money given her before marriage, his own; yet unleſs he recovers ſuch debts during the marriage, and renews the bonds, and takes them in his own name, he has not ſuch an abſolute intereſt in them as to be able to deviſe them by his will, but they will, after his death, again become the property of his wife. 1 *Inſt.* 351. But if a woman's fortune, or any part of it, conſiſted in bonds given her before marriage, and the huſband, on the marriage, makes a ſettlement on her in conſideration of ſuch fortune, notwithſtanding the bonds are not renewed during the marriage, yet the huſband will be entitled to them, being in this ſenſe conſidered as a purchaſer for a valuable conſideration; and he may deviſe them, or they ſhall go to his executor even though the wife ſhould ſurvive him. *Talb.* 108.

A reverſion. Where a man is entitled to an eſtate in reverſion, expectant on the determination of another perſon's life, who holds the lands for his life or in tail, he may by his will diſpoſe of this; and if the tenant in tail or for life dies during the life-time of the teſtator, ſuch lands, which will then come to his poſſeſſion, will paſs without any republication of the will; the reverſion at the time of making the deviſe being a certain preſent intereſt, though it was to take place in future. 10 *Rep.* 78.

Eſtate for another's life. And as to freehold eſtates held by one perſon during the life of another, ſtyled eſtates *per auter vie*, or for the term of another's life, thoſe are alſo deviſable by will, by 29 *C. II, c.* 3, *ſ.* 12.

But no proviſion being yet made with reſpect to copyhold eſtates, the power of deviſing is now indirectly exerciſed over thoſe by an application of the doctrine of uſes ſimilar to that which was anciently reſorted to in reſpect to freehold lands; for the practice is to ſurrender to the

uſe

uſe of the owner's laſt will, and on this ſurrender the will operates as a declaration of the uſe, and not as a deviſe of the land itſelf.

Copyhold eſtates, or eſtates held by the copy of court-roll, are not deviſable, they being excepted out of the ſtatute 29 *C. II*, *c.* 24, which by converting all other eſtates into ſocage tenure rendered them deviſable by the ſtatute of wills. Copyhold eſtates.

If I give "*my whole eſtate*," or "*all my eſtate real and perſonal*," to my wife, or any other, they paying legacies and debts, my debts being 20l. and my perſonal eſtate but 5l. they ſhall have the whole of my lands, by the words "*my whole eſtate*," or "*all my eſtate, real and perſonal*;" for in common acceptance theſe words are extended to land. And the former rule, where a perſon is to pay a ſum in groſs, applies here, they being to pay my debts. A deviſe of *all his eſtate whatſoever* comprehends all that a man has, real or perſonal, land, money, goods, or other property whatever: provided in all the above caſes that the will is duly executed, and atteſted by three witneſſes, ſo as to paſs land. And where there is a ſurrender to the uſe of his will, which is rendered neceſſary by the cuſtoms of the ſeveral manors, a copyhold eſtate will fall under the ſame conſtruction. A deviſe by the words "my whole eſtate."

If I give lands to John and Robert, *and their heirs*, John and Robert will be joint-tenants, and the ſurvivor or longer liver of them ſhall have the lands in fee-ſimple. And it is the ſame if I give them to three or more perſons; the heirs of the perſon or perſons firſt dying not being entitled to any thing, and the perſons dying not being entitled to diſpoſe of any part by their will, the ſurvivor by law taking the whole. But if I give land to two or more perſons, and their heirs, *to be equally divided between them*, this will make them tenants in common: each perſon's moiety or ſhare of the eſtate deſcending to his own heirs reſpectively, and being deviſable by will, not ſurviving to the other. It is proper therefore in all wills, when this latter eſtate is meant to be given, (and which is generally the caſe where land is given to two or more) to add the word "to hold as tenants in common, and not as joint-tenants," which prevents a poſſibility of doubt taking place. Deviſe making joint tenants.

In *deeds*, the legal and neceſſary words to create an eſtate-tail are "To John Mills, *and the heirs of his body*;" which both in deeds and wills give an eſtate-tail. But Eſtate-tail.

here alſo the rule formerly laid down will hold good; that the intention of the maker of the will ſupplies the want of thoſe words in particular caſes. Though a man is not permitted by his will to direct an inheritance to deſcend againſt the poſitive rules of law.

Terms by which an eſtate in fee-ſimple, fee-tail, or for life, may be taken.

The words in a will whereby perſons may take an eſtate in fee-ſimple, fee-tail, or for term of life only, are various; as in the conſtruction of wills, which are to be ſo favourably expounded as to purſue if poſſible the will of the teſtator, as has lately been mentioned, the law many times diſpenſes with the want of words in deviſes that are abſolutely requiſite in all other inſtruments.

The uſual words for conveying a fee-ſimple, either by deed or will, are, *heirs and aſſigns for ever*; but by a deviſe to a man for ever, or to one and his aſſigns for ever, or to one in fee-ſimple, the deviſee hath an eſtate of inheritance, although the deviſor hath omitted the legal words of inheritance. 2 *Black. Com.* 108, 381.

And a deviſe of all the reſt, reſidue, and remainder of the deviſor's lands, *hereditaments*, goods, chattels, and perſonal eſtate, "his legacies and funeral expences being *thereout* paid," was held to convey the fee of all the deviſor's real eſtate; as that by the words of this deviſe all the legatees may call on the deviſee for their demands; and therefore it muſt be taken to have been the deviſor's intention to give the deviſee wherewithal to pay them.

And it was ſaid, That ſuch is the rule of law, that unleſs ſome words are uſed which the law conſiders ſufficient to carry a fee, the deviſee can only take an eſtate for life; though indeed ſlight expreſſions are ſufficient to paſs the inheritance, where the court think that ſuch is the deviſor's intention.

No technical words are neceſſary in a will to give a fee; but if any words are inſerted to effectuate which it is neceſſary that a fee ſhould paſs, that is ſufficient. The teſtator firſt bequeathed a leaſehold eſtate to his ſiſter for *the reſidue of the term*, and afterwards deviſed "all the reſt, reſidue, and remainder, of his lands, *hereditaments*, and perſonal eſtate," to the ſame perſon; he clearly therefore intended to give by this deviſe, every thing which he had not before diſpoſed of. Then follow the words "my legacies and funeral expences being *thereout* paid," which of themſelves are ſufficient to paſs the fee. 3 *Durnf. & Eaſt*, 356.

An

An eſtate tail, the uſual words for creating it, either by deed or will, are, *the heirs of the body* of the grantee, or deviſee; as ſuppoſe it to be created by will, I give and deviſe to J. S. (or whoever he may be) *and the heirs* of his body; but in a will an eſtate tail may be created by a deviſe to a man and his children; or to a man and his ſeed, though the word of procreation, *viz. body*, be omitted. And under a deviſe to "A. for life, and after his deceaſe *to and amongſt his iſſue, and in default of iſſue*," then over to others named in the will, A. takes an eſtate tail. *Gilb. on Wills*, 2 *Black Com.* 115. Eſtate-tail.

If I give lands to a man and his heirs male *for ever*, this is adjudged to be eſtate tail.

In a will, *iſſue* is either a word of purchaſe or limitation, as will beſt effectuate the deviſor's intention. Therefore where A. deviſed his eſtate to his two daughters, equally to be divided between them, *viz.* one moiety to one and her heirs, and the other moiety to the other for life, and after her deceaſe to the *iſſue of her body and their heirs for ever*, and ſhe had one child living at the time of the deviſe, the ſecond took only an eſtate for life, with remainder to her children as purchaſers. 3 *Durnf. & Eaſt*, 83. *Trin.* 31 *G. III.*

An eſtate for *life* may be; as where the eſtate was limited by will to A. for life, remainder to his firſt and other ſons in tail male, "remainder to the uſe of all and every the daughters, *&c.* as tenants in common, *and in default of ſuch iſſue*, to the uſe of the right heirs of the deviſor. After the death of A. without any ſon, an only daughter was held to take only an eſtate for life. And where a deviſe was of real and perſonal eſtate, to the wife for life, remainder to the teſtator's ſon R. R. *and his iſſue* lawfully begotten, *to be divided as he ſhall think fit*; *and if he ſhould die without iſſue, remainder over*, it was held that R. R. took only an eſtate for life. That he had a power to divide; but if he did not ſo, there was an intereſt in his children that would entitle them to an equal diviſion. 3 *Durnf. & Eaſt*, 83. *Hay* v. *The Earl of Coventry*. Eſtate for life.

Where the deviſe be to a man and his aſſigns, without annexing the words of perpetuity, the deviſee ſhall take only an eſtate for life. *Black. Com.* 108.

By a will, an eſtate may paſs by mere implication, without any expreſs words to direct its courſe. As, where A. deviſed lands to his heir at law, *after the death of his wife*: An eſtate paſſing by implication.

here, though no eſtate is given to the wife *in expreſs terms*, yet ſhe ſhall have an eſtate for life by implication; for the intent of the teſtator, is clearly to poſtpone the heir *till after her death*; and, if ſhe does not take it, nobody elſe can. So alſo, where a deviſe is of black-acre to A. and of white-acre to B. in tail, and if they both die without iſſue, then to C. in fee: here A. and B. have *croſs remainders* by implication, and on the failure of either's iſſue, the other or his iſſue ſhall take the whole; and C.'s remainder over ſhall be poſtponed till the iſſue of both ſhall fail. But, to avoid confuſion, no ſuch croſs remainders are allowed between more than two deviſees: and, in general, where any implications are allowed, they muſt be ſuch as are *neceſſary* (or at leaſt highly *probable*) and not merely *poſſible* implications. 2 *Black. Com.* 381.

Uſual words of conveying an eſtate for life.

Where it is intended a man ſhould have only an eſtate for life, the uſual method both in deeds and wills, is, to convey the eſtate by the words *during the terms of his natural life*; and then for preſerving contingent remainders, to convey or deviſe the ſame to truſtees. With reſpect to deviſes, though an expreſs eſtate for life be given to the anceſtor, with a limitation to the heir or heirs of his body, or his iſſue, yet regularly the anceſtor takes an eſtate tail; and if a deviſe be to one for life, and afterwards a limitation, either immediate or mediate, to the heirs of his body, the deviſee takes an eſtate tail, whereby a father, if not prevented, may ſecure the eſtate to himſelf, and deprive his children thereof. 1 *Co. Rep.* 99. *Bur.* 1631.

Diſpoſal of lands to charitable uſes.

In order to prevent any impoſition in reſpect to the diſpoſal of lands to charitable uſes, which might ariſe in a teſtator's laſt hours, and in ſome meaſure from juſt political principles to reſtrain deviſes in mortmain, or the too great accumulation of land in hands where it lies dead, and not ſubject to change poſſeſſors, it is provided by an act of 9 *G. II. c.* 36, (called the ſtatute of Mortmain) that no manors, lands, tenements, rents, advowſons, or other hereditaments, corporeal or incorporeal, whatſoever, nor any ſum or ſums of money, goods, chattels, ſtocks in the public funds, ſecurities for money, or any other perſonal eſtate whatſoever, *to be laid out or diſpoſed of in the purchaſe of any lands, tenements, or hereditaments*, ſhall be given, limited, or appointed *by will*, to any perſon or perſons, bodies politic or corporate or otherwiſe, *for any eſtate or intereſt whatſoever; or any ways charged or incumbered*

cumbered by any person or persons whatsoever, in trust or for the benefit of any charitable use whatsoever; but such gifts shall be by deed indented, sealed and delivered in the presence of two or more credible witnesses *twelve calendar months at least* before the death of such donor, and be inrolled in the high court of chancery within *six calendar months* after execution, and the same to take effect immediately after the execution for the charitable use intended, and be without any power of revocation, reservation, or trust for the benefit of the donor. And all gifts and appointments whatsoever *of any lands, tenements, or other hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect any lands, tenements or hereditaments, or any personal estate, to be laid out in the purchase of any lands, tenements, or hereditaments, or any estate or interest therein, or of any charge or incumbrance affecting or to affect the same,* to or in trust for any charitable use whatsoever, *made* in any other manner than is directed by this act, *shall be absolutely null and void.* But the two universities, their colleges, and the scholars upon the foundation of the colleges at Eaton, Winchester, and Westminster, are excepted out of this act; but with this proviso, that no college shall be at liberty to purchase more advowsons than are equal in number to one moiety of the fellows or students upon the respective foundations.

Where a devise was to the fellows and scholars of Christ and Caius Colleges, the same was held good, and within the above-mentioned exception. *Attorney General* v. *Tancred*, in Chancery, 1757. *Amblers Rep.* 351. Devise to fellows of colleges.

It may, in the next place, be proper to treat on such devises and bequests as are void and within the meaning of the statute, and such as are not. And as most of the cases pertaining hereto are in the name of the attorney general, we shall drop a few words concerning the reason of this, which is, that the king, as parent of the country, has the general superintendance of all charities. Hence it is always considered, that it is he who erects; the subject is only instrumental; and thus his attorney general is the guardian of their rights, and relator of their claims, as well as their grievances, before the court of chancery; so that the usual course of application to the court to establish charities, is by bill of information in the name of the attorney general. Bequests to charitable uses.

Of

Deviſes of lands, &c.

Of deviſes and bequeſts that are void, and within the meaning of the ſtatute of mortmain. Where a deviſe was of lands to be ſold, and the reſidue of the money, after the payment of debts, &c. to a charity, it was held void by the ſtatute. *Amb. Rep.* 30.

Part to charitable uſes.

Where there was a deviſe of lands to be ſold, and part of the money ariſing by ſale to go to *charitable uſes*, and the reſidue of the money was given over; it was held that ſo much as was given in mortmain ſhould lapſe to the heir, and not to the reſiduary legatee. *Groſvenor v. Hallam.*

A reſidue to charitable uſes.

A deviſe of reſidue of real and perſonal eſtate, conſiſting partly of a term, to charity, whether it be an old term, or created anew, is within the ſtatute as to the term. A deviſe of reſidue of real and perſonal eſtate to a charity is void, as to ſuch part of the reſidue as is leaſehold. *Att. Gen. v. Graves.*

Remainder to a charity.

Where the deviſe was of the remainder of teſtator's effects, annuities, mortgages, &c. to a charity, the deviſe of the mortgages was void, but that of the perſonal eſtate was held good.

A term in groſs.

A term in groſs is within the deſcription of the ſtatute, &c. where a deviſe was of freehold houſes, to eight poor perſons of a pariſh, it was held to be void; and a perſonal fund, attached to the freehold, was alſo held void by the ſtatute.

Water-works.

Where a bequeſt was of a thouſand pounds by ſale of lands to be applied in water-works, for the uſe of the inhabitants of a town; it was held to be within the ſtatute of mortmain, as a public *charitable* uſe.

Deviſe for repairing a chapel.

Of deviſes and bequeſts that are not void according to the ſtatute. Dr. Conings, by will gave 200*l.* to the defendant, Stone, to be laid out in repairing the free chapel of Grendon-Court, part of his eſtate. The Lord Chancellor was clear that it was not within the words or meaning of the ſtatute of mortmain. The words of the ſtatute are, "to be laid out in the *purchaſe* of lands, &c." The intention of the act was, to prevent increaſe of lands, &c. in mortmain, beyond what was ſo at the time the act was made. This legacy is only to ſupport that, which at the time of the will was in mortmain. And where Thomas Mundy, late rector of Bickton, in Devonſhire, by his will, gave two ſums of 400*l.* and 100*l.* to truſtrees in truſt to be laid out in building a parſonage houſe on the glebe of Bickton, the

Or building a parſonage houſe.

ſame

ſame was held not to be within the ſtatute of mortmain. *Per* Maſter of the Rolls: It is not within the words nor meaning of the ſtatute. The ſtatute was intended to prevent new acquiſitions in mortmain: erecting a building is not to be conſidered as ſuch. Suppoſing the teſtator had not made ſuch deviſe, he might have been ſued for dilapidations, and the money recovered would have been laid out on the building. This is nothing more. *Harris v. Barns and others. Amb. Rep.* 651. *Glubb and Mundy v. Attorney Gen. Amb.* 373.

Where mortgages, chattels real and perſonal, are bequeathed to a charity, the bequeſt of the perſonalty will not be void. As where William Moor, by his will, dated July 15th 1763, gave the reſidue of his perſonal eſtate in theſe words: "my will is, that the remainder of my effects, annuities, mortgages, bonds, or notes, with my houſhold furniture, &c. be ſold; and what money they ſell for, I give to two charity ſchools for boys and girls of St. Andrew's Holborn, now kept in Hatton-Garden, towards their education and cloathing for ever, to be divided into two equal parts, half to each ſchool." It was here held that the deviſe of the mortgages is void, but being part of the enumerated reſidue, they were ordered to be applied firſt in payment of debts, before any part of the perſonal eſtate, to leave a larger fund for the charity. The maſter of the Rolls diſtinguiſhed between the caſe where a mortgage is given as a ſpecific bequeſt, and where it paſſes by the reſiduary bequeſt, enumerated and deſcribed among the different ſpecies of eſtates, of which the reſidue conſiſts. In the former caſe it cannot be firſt applied to pay debts, but in the latter it may; and he gave directions accordingly that the mortgages ſhould be firſt applied. *Att. Gen. v. Caldwell.* Mortgages, chattels, &c. bequeathed to a charity.

George Cranſtown, by his will, gave the intereſt of 4200*l.* to the *poor inhabitants* of St. Leonard, Shoreditch. After argument at bar, in which it was inſiſted for the defendants, that the bequeſt is void for uncertainty in the deſcription of the perſons to take. Sir Thomas Clarke, Maſter of the Rolls, ſaid: The word *inhabitant* bears a very general ſenſe, and may extend to every one living in the pariſh. But as it could not be intended that the poor inhabitants which are relieved by the pariſh, ſhould have benefit by this legacy, which in effect would be giving to the rich and not to the poor, he declared that

that the diſtribution of the legacies was to be confined to the poor inhabitants of St. Leonard Shoreditch, *not receiving alms*; and ordered a ſcheme to be laid before the maſter for ſuch diſtribution. *Att. Gen. v. Clark.* Amb. 422.

Propertydeviſeableonly by the ſtatute.

As real property, unleſs by the local cuſtoms of particular places, is deviſeable only by virtue of the ſtatutes, it will be neceſſary, in order to diſcover how far the power of deviſing real eſtates extends, to take a view of thoſe ſtatutes. The ſtatute 32 *H. VIII.* enacts that all perſons having, or which thereafter ſhall have, any manors, lands, tenements, or hereditaments, of any eſtate of inheritance holden by or in the nature of ſocage tenure, (by which all lands except copyholds are now holden) ſhall have full and free liberty, power and authority, to give, diſpoſe, will and deviſe, as well by his laſt *will and teſtament* in writing, as otherwiſe *all his ſaid manors, lands, tenements*, and *hereditanents*, or any of them, at his free will and pleaſure.

Eſtate of inheritance.

And by 34 & 35 *H. VIII. c.* 5, *ſ.* 8, it is enacted, that the words "eſtate of inheritance," mentioned in the act of 32 *H. VIII*, ſhall be taken to mean *eſtates in fee-ſimple only*. It then proceeds to enact, that all perſons having a ſole eſtate or intereſt, in fee-ſimple, or ſeized in fee-ſimple, in coparcenary or in common, of any manors, lands, tenements, rents or other hereditaments, in poſſeſſion, reverſion, remainder, or of rents or ſervices incident to any reverſion or remainder, have full liberty, power, and authority, to give, diſpoſe, will, or deviſe to any perſon or perſons whomſoever, by their *laſt will and teſtament* in writing, all their ſaid manors, lands, tenements, rents and hereditaments, or any of them, or any rent, commons, or other profits or commodities, out of the ſame, or any part thereof, at their own free will and pleaſure.

Advowſons.

An *advowſon* has been held to be included under the word tenement, mentioned in the above ſtatutes, and is therefore deviſeable. *Hob.* 303. As it is alſo under the word hereditament. *Cro. Eliz.* 359. 1 *And.* 21.

The next preſentation to an advowſon will likewiſe paſs by the ſame word. 2 *Black. Rep.* 1240.

Donative.

A *Donative* has alſo been held to be deviſeable. 2 *Vern.* 748.

Rents.

Rents are deviſeable, as well by 34 *H. VIII*, as alſo by cuſtom; and when lands are deviſeable by cuſtom, the rents iſſuing out of them are ſo too.

Tythes alſo, of which a man is ſeized in fee, may be de- Tythes.
viſed, as coming under the denomination of hereditaments. *Sty.* 261.

Manors are deviſeable by general cuſtom, as well as by the ſtatutes. 3 *Co.* 32, b.

And franchiſes, if valuable and not reſtrained to the perſon of the grantee and his heirs, are deviſeable; and though they be not valuable, they may paſs as appurtenant to other things which are ſo. 3 *Co.* 32, 33.

An annuity in fee is alſo deviſeable. *Co. Litt.* 144. Annuity.

Eſtates in fee-ſimple are ſaid to be either in poſſeſſion or in expectancy; they are in poſſeſſion where no intermediate eſtate ſubſiſts between the right to poſſeſs and the actual enjoyment itſelf; they are ſaid to be in expectancy, when the actual intereſt and poſſeſſion is deferred till the accompliſhment of ſome other act. The firſt of theſe eſtates are deviſeable; but the ſecond cannot be deviſed. Fee-ſimple in poſſeſſion deviſeable; in expectancy not.

Reverſions, being a preſent intereſt, though a degree removed from preſent enjoyment, are deemed fee-ſimple in poſſeſſion, and are therefore deviſeable. Reverſions.

As are remainders, which ſtand in a ſimilar predicament. Remainders.

Contingent intereſts, that is to ſay, eſtates or intereſts limited to take place upon a precedent condition, though reſting in mere poſſibility of taking effect, are alſo deviſeable. 3 *Bulſ.* 184. 1 *Black. Rep.* 222. 1 *Term. Rep. Com. P.* 33. Contingent intereſts.

But a man cannot by his will deviſe lands which he ſhall acquire after making his will; the will only operating on ſuch lands as he is poſſeſſed of at the time of publiſhing it. And though a man, by expreſs words in his will, gives to another all the lands which he ſhall have at the time of his death, yet this deviſe will be good only as to ſuch lands as he had at the time of making the will; and any land purchaſed afterwards will not paſs by it, but go to the heir at law, unleſs the will is re-publiſhed. A man cannot deviſe lands acquired after making a will.

IV. *Who are capable of taking by Will.*

Every perſon, not labouring under ſome legal diſability, is capable of taking by will.

Coverture does not diſable a woman to take a deviſe, for though at law ſhe cannot take without the conſent of her huſband, a court of equity will compel him to give his c[illegible] *Perk.* 43. Married woman.

A married woman is not disabled from being a devisee to her husband; for the reason in law, that *husband and wife are one person*, does not hold in the case of a devise, which does not take effect till after his death. 1 *Eq. Car. Abr.* 173.

Papists. Papists are now capable of being devisees, on their taking and observing the oath prescribed by the stat. of 18th of the present king; which repeals part of the stat. 11th and 12th of *W. III.*

Bastards before born. A bastard, when *born*, is capable of taking by devise; and the lawful issue of a bastard is capable of inheriting, or taking by descent or otherwise such estate as the parent might die possessed of: but no person, except his wife or lawful issue, can claim any part of his estate, as kindred; for he can have no collateral kindred.

Bastards after born. A devise to a bastard in the mother's womb, or *before born*, is void. Yet if a bastard is born at the time of making the will, whereby either real or personal estate is given to him, he is capable of taking it; but it is safe to describe the bastard in the will, as the natural son or daughter of A. B. (his mother) especially if he be a tender infant that has not got a name by reputation. 2 *Black. Com.* 512.

V. *Of the Execution of a Will.*

Signing and attesting a will. It is enacted by 29 *C. II, c.* 3, (usually stiled the statute of frauds and perjuries) "that all *devises and bequests*, of any lands or tenements deviseable, either by common law, or by force of the statute of wills, or by that statute, or by force of the custom of Kent, or the custom of any borough, or any other particular borough, *shall be in writing*, and *signed by the party* so devising the same, or by some other person *in his presence*, and by his express direction, and *shall be attested* and subscribed, in the presence of the devisor, by *three or more credible witnesses*, or else such devises or bequests shall be utterly void and of none effect."

What is a signing. In the construction of the above act of parliament, it has been adjudged, that the name of the person making the will, *written with his own hand*, as "I John Mills do make this my last will and testament," is a sufficient signing, without any name at the bottom. But the safest way is to sign the name not only at the bottom or end of the will, but at the bottom of each page or sheet of paper, if the will contains more than one; and the witnesses [illegible] will [illegible] seing

seeing the testator sign all the sheets, and put his seal (though that is not absolutely necessary in law) as well as his name to the last sheet, must write their names under the attestation in the last sheet only.

In general, however, the intention of the testator is so entirely regarded, that any kind of disposition, not expressly contrary to the rules of law, will constitute a valid devise. Intention principally regarded.

It has been held, that sealing of a will, is a signing within the statute of frauds and perjuries. 2 *Str.* 764. *Warneford* v. *Warneford.* Sealing.

In the construction of wills it is an invariable rule, that a devise must be most favourably expounded, to pursue if possible the will of the testator, who, for want of advice or learning, may have omitted the legal and proper phrases: therefore many times the law dispenses with the want of those words in wills which are absolutely requisite in all other instruments. And thus the fee-simple of, or entire property in land may be conveyed by will, without using those words of inheritance, and an estate-tail may be given without the words of procreation, which are necessary to create those estates by deed; the intent of the devisor supplying that defect. And hence where a title depends upon the words of a will, any dispute relative to it is as properly determinable in Chancery, by a court of equity, as before a judge and jury; there being no distinction between the rules of law and equity herein; for the will is construed in each court with equal favour and benignity, and expounded rather on its own particular circumstances, than by any general rules of positive law. A devise to be favourably expounded.

All the words of a will must be considered together, to find out the intention, and the intention must take place, unless contrary to the rules of law. The intention of the testator expressed in his will, *if consistent with the rules of law*, shall prevail. But those words, *if consistent*, &c. are applicable only to the nature and operation of the estate or interest devised, and not to the construction of the words. *Amb. Rep.* 345. *Doug.* 341. *Lovelass.* Intention to be regarded.

The intention of the testator is said by a great lawyer to be the pole star to guide the judges in the exposition of wills; but though it is allowed to be thus considered, in order to explain the words of the will, yet such intention must be collected from the will itself, and not from any report or evidence concerning it: the courts having been at all times careful of admitting verbal testimony of any Reasons for considering the intention of the testator.

kind in reſpect to a will; as it might be the means of much perjury and contrariety of evidence, which the legiſlature have now taken great pains to avoid in regard to wills. And little credit is due to any thing that may have fallen from a man himſelf, either before or after making his will; it often appearing that inſinuations may be thrown out purpoſely to miſlead thoſe who were intereſted in the diſpoſal of his property.

But the name muſt be actually written.

But if the name of the teſtator be not actually written by himſelf, or by his direction, (in caſe of his not being able to write) no *intention* to ſign is ſufficient, though attended with the ſtrong circumſtance of his having made an *effort* to do it; for however willing the courts may be to conſtrue wills in ſuch a manner as to effectuate the intention of the teſtator, yet they cannot go ſo far as to give effect to a *conſtructive* ſigning, upon a preſumed intention. *Doug.* 241.

Atteſtation of the witneſſes.

The atteſtation and ſubſcription of the witneſſes, in the preſence of the teſtator, is required by the ſtatute, principally with a view of putting a ſtop to the ſecret manner in which, previous to an intended fraud, wills were executed. But the buſineſs of the perſons atteſting the execution of a will, is not *barely* to witneſs the *manual* act of ſigning, but alſo to bear teſtimony of the *ſanity* of the teſtator. 3 *Peere Wil.* 93.

Subſcribing witneſſes not required to wills of perſonal eſtate.

But a written will of goods and chattels is not altered by the ſtatute; and therefore it is not abſolutely neceſſary to have any ſubſcribing witneſſes to it; witneſſes ſubſcribing their names being firſt introduced by the ſtatute. And if a teſtament of chattels is written in the teſtator's own hand, though it hath neither his name nor ſeal to it, nor witneſſes preſent at its publication, it is good in law, if ſufficient proof can be had that it is his hand-writing. And though written in another man's hand, and never ſigned by the teſtator, yet if proved to be according to his inſtructions, and approved by him, it hath been held a good teſtament of the perſonal eſtate. The ſafeſt way, however, is for the teſtator to ſign, ſeal, and publiſh it in the preſence of witneſſes. 2 *Black.* 502.

Form not regarded,

In what form, or on what part of the will, the atteſtation is made, is of no conſequence: it will be good, though each witneſs write his name on ſeparate ſheets of the will, and that although the ſheets be not tacked together. 3 *Bur.* 1775. *Com. Rep.* 410.

3. Though

Though the witneſſes atteſting at ſeveral times does not invalidate the will, it is by much the ſafeſt way that all three witneſſes be preſent at the ſame time; becauſe if one of them who ſubſcribed ſeparately ſhould die, it might be difficult to prove the will, as the ſurviving witneſſes would not be able to prove the ſubſcription of the witneſs deceaſed, and the hand-writing of the teſtator would not be admitted where there were living witneſſes.

Publication neceſſary;

The ſigning of the teſtator muſt be accompanied with a publication, that is, a declaration that the inſtrument is will. *Burn's Eccleſ. Law*, 117. 8 *Vin. Abr.* 125.

but not of the contents.

It in the publication of a will it is not neceſſary that witneſſes ſhould be made acquainted with its contents. *Ib.* 52.

Subſcription of witneſſes ſeparate.

Though the witneſſes muſt all atteſt the execution of the teſtator's will in *his* preſence, yet it is not neceſſary that it be done in the preſence of each other. 2 *Atk.* 176. But in this caſe it ſeems the better opinion, that the teſtator muſt acknowledge the ſignature of his name to be his, in the preſence of each. *Ibid.* 2 *Vern.* 429. *Prec. Chan.* 184.

It is ſufficient if the teſtator *might* ſee the witneſſes ſign.

And, though the ſtatute requires that the witneſſes to the will ſhall ſubſcribe their names in the *teſtator's preſence*, (to prevent obtruding another will in the place of the true one) yet it is ſufficient if the teſtator *might* ſee, it not being abſolutely requiſite that he *ſhould* actually ſee them ſigning; for, at that rate, if a man ſhould but turn his back, or look off, it might make the will void. And where the teſtator deſired the witneſſes to go into another room ſeven yards diſtant to atteſt his will, in which there was a window broken through, whereby he might ſee them, it was adjudged by the court to be a witneſſing in his preſence.

So, where a will was atteſted by witneſſes in an attorney's office, when the teſtatrix was in her carriage, where ſhe might ſee them through the windows thereof and of the attorney's office, it was adjudged to be well atteſted. *Browne's Chan. Rep.* 99.

Teſtator owning his hand.

Where the teſtator owns his hand before the witneſſes who ſubſcribe the will in the teſtator's preſence, the will is good, though all the witneſſes did not ſee the teſtator ſign: and it is obſervable that the ſtatute of frauds does not ſay that the teſtator ſhall ſign his will in the preſence of three witneſſes; but requires theſe three things, firſt, That the will ſhould be in writing. Secondly, That it is ſigned by the

the teſtator. And thirdly, That it ſhould be ſubſcribed by three witneſſes in the preſence of the teſtator. 3 *P. Will.* 254. *Stonehouſe & ux'* v *Evelyn.*

On ejectment by the heir at law, the queſtion for the opinion of the court was, whether it ſhould be left to a jury to determine, whether the witneſſes to a will (being all dead) ſet their names in the preſence of the teſtator, and this merely upon circumſtances without any poſitive proof. *By the court:* This is a matter fit to be left to a jury, which is all that is referred to the court. The witneſſes, by the ſtatute of frauds, ought to ſet their names as witneſſes, in the preſence of the teſtator; but it is not required by the ſtatute, that this ſhould be taken notice of in the ſubſcription to the will: and whether inſerted or not, it muſt be proved: if inſerted, it does not conclude but it may be proved *contra*, and the verdict may find *contra*; then if not concluſive when inſerted, the omiſſion does not conclude it was not ſo, and therefore muſt be proved by the beſt proof the nature of the thing will admit. In caſe the witneſſes be dead, there cannot probably be any expreſs proof, ſince at the execution of wills few are preſent but the deviſor and witneſſes; then, as in other caſes, the proof muſt be circumſtantial, and here are circumſtances. Firſt, three witneſſes have ſet their names; and it muſt be intended they did it regularly. Secondly, one witneſs was an attorney of good character, and may be preſumed to underſtand what ought to be done rather than the contrary. And there may be circumſtances to induce a jury to believe, that the witneſſes ſet their hands in the preſence of the teſtator, rather than the contrary; and it being a matter of fact, was proper to be left to them. And the court was of opinion that the plaintiff ought to be nonſuited. *Comyns' Rep.* 531.

Atteſtation good, though not declared to be made in the preſence of the teſtator.

Upon a trial at bar concerning the execution of a will it did not appear upon the face of it, that the atteſtation of the witneſſes was made in the preſence of the teſtator, which being objected to, a caſe was cited, where Lord Chief Juſtice Eyre held it a matter proper to be left to a jury, whether they believed it to be done ſo or not: and Mr. Juſtice Chappel cited a caſe to the ſame purpoſe, and held it not neceſſary it ſhould be inſerted in the will, that the atteſtation *was in the preſence of the teſtator*, though by the ſtatute it is neceſſary *it ſhould in fact* be ſo atteſted. *Vin. Abr. tit. Deviſe, ca.* 4, *p.* 128. *Croft on Dem' of Dalby* v *Pawlet.*

A witneſs

A witneſs proving a will of lands, ſwears that he ſubſcribed the will as a witneſs in the ſame room, and at the teſtatrix's requeſts two others ſwore that they ſaw the will executed by the teſtatrix, and that they ſubſcribed the ſame in the teſtatrix's preſence: a fourth witneſs was gone beyond ſea, and therefore could not be examined. *Cowper*, Chancellor, doubted as to the proof of the execution of this will, but would declare no opinion on the point until further application; ſaying, that the heir at law, then an infant, might by that time come of age. Afterward *Lord Macclesfield* held, that the bare ſubſcribing by the witneſſes, in the ſame room, did not neceſſarily imply it to be in the teſtator's *preſence*; for it might be in a corner of the room in a clandeſtine fraudulent way; and then it would not be a ſubſcribing by the witneſſes in the teſtatrix's preſence, merely becauſe in the ſame room; but that here it being ſworn by the witneſs, that he ſubſcribed the will at the teſtatrix's requeſt, and in the ſame room; this could not be fraudulent, and was therefore well enough. 1 *P. Wm.* 740. Subſcribing the will at the teſtatrix's requeſt.

A. B. made a will, all of his own hand writing, as follows: "In the Name of God, amen, I. A. B. do make this "my laſt will and teſtament for fear of mortality, till I "can make it more at large. I give and bequeath 1000*l.* "unto D. P. to be paid by my executor (or) adminiſ"trator, and for the ſure payment thereof I do charge all "the real and perſonal eſtate which I have in the world, "I being very deſirous to make a proviſion for the ſaid "D. P. for ſeveral good reaſons inducing me thereto. In "witneſs whereof I have hereunto ſet my hand, this 7th "day of December, &c." Signed, "A. B." And delivered to the ſaid D. P. and about a fortnight before his death. A. B. declared he had left with D. P. an unqueſtionable ſecurity for 1000*l.* charged upon his real and perſonal eſtate, and that he had done the ſame for fear of mortality, till ſuch time as he could make a full and complete will; which he declared he would do as ſoon as his wife was brought to bed, but he waited to ſee if it were male or female. He died ſuddenly, leaving his wife then lying-in of a daughter. The judge of the prerogative court gave ſentence againſt the will, and pronounced that A. B. died inteſtate. On appeal to the delegates, (among whom were *Holt*, C. J. J. *Price*, B. and Judge *Dormer*) the ſentence was reverſed, and they pronounced for the will. 2 *Raym.* 1282. *Powel v. Baresford.* A temporary will, or teſtamentary ſchedule.

It

Who are proper witneſſes to a will.

It is neceſſary to be careful who are made witneſſes to the will. And here the ſafeſt method is to call in three indifferent perſons, (if there is any deviſe of lands in the will, otherwiſe if the whole will reſpects only perſonal eſtate, two will be ſufficient) who have no legacy given them by the will or codicil which they are required to witneſs the execution of, and not being creditors, at leaſt not conſiderable ones, to the perſon making the will; particularly if, as is often the caſe, the land is made ſubject by the will to the payment of debts. For by an act of parliament (25 *G. II, c.* 26,) if any perſon who has a legacy left him by a will is a witneſs to that will, he loſes the legacy, it being made abſolutely void. And though the teſtimony of creditors who are witneſſes to the execution of a will muſt be admitted, yet it may affect their credit with a jury, ſhould the will be diſputed.

Different opinions on this point.

But Lord Mansfield declared his opinion, that credibility could be conferred on an intereſted witneſs, by payment or releaſe of his claim. And it was held by Clive, Bathurſt, and Gould, againſt Pratt, Chief Juſtice, that a witneſs, though incompetent at the time of atteſtation by reaſon of being intereſted, might purge himſelf by releaſe or payment of the claim. *Hindſon* v. *Herſey*. 4 *Burn's Eccleſ. Law*, 93.

Witneſs againſt a will.

There is, however, no doubt that a legatee may be a witneſs *againſt* a will. *Salk.* 691.

One of the ſubſcribing witneſſes to the atteſtation of a will, having an annuity deviſed to his wife, was held not to be a credible witneſs within the ſtatute. 2 *Str.* 1253 *Holdfaſt on dem. of Anſty.* v. *Dowſing*.

Witneſs convicted of larceny.

With reſpect to the credibility of a witneſs on account of crimes, it was held, that where he had been convicted of larceny, he was thereby clearly rendered incompetent; and ſo of any other infamous or diſgraceful crime. 4 *Burn's Eccleſ. Law*, 93. 2 *Wilſ.* 18.

VI. *Of revoking or annulling a Will, and of a Republication.*

All wills are revocable,

Though a man may have made his laſt will and teſtament, and declared it irrevocable in the ſtrongeſt words, he is at liberty to revoke it. 8 *Co. Rep.* 82.

by expreſs and implied revocation.

A will may be revoked either by ſome poſitive act of the teſtator, or by ſome act of a doubtful and equivocal import, furniſhing

furniſhing only grounds to preſume that the teſtator had ſuch intention, which is an implied revocation.

By the aforeſaid ſtatute of frauds, 29 *C. II. c.* 3, it is enacted, that no deviſe in writing of lands, tenements, or hereditaments or any clauſe thereof, ſhall be revocable otherwiſe than by ſome other will or codicil in writing, or other writing declaring the ſame, or by burning, cancelling, tearing, or obliterating the ſame by the teſtator himſelf, or in his preſence, and by his directions and conſent; but all deviſes and bequeſts of lands and tenements ſhall remain and continue in force until the ſame be burnt, cancelled, torn, or obliterated by the teſtator or by his directions in manner aforeſaid, or unleſs the ſame be altered by ſome other will or codicil in writing, or other writing of the deviſor ſigned in the preſence of three or four witneſſes declaring the ſame. And that no will in writing concerning any goods, chattels, or perſonal eſtate, ſhall be repealed, nor ſhall any clauſe, deviſe, or bequeſt therein be altered or changed by any words or will by word of mouth only; except the ſame be in the life-time of the teſtator committed to writing, and after the writing thereof read to the teſtator and allowed by him, and proved to be ſo done, by three witneſſes at the leaſt. How expreſsly revoked.

To a revocation by ſome *other* will, *&c.* it has been determined that ſuch other will muſt in all reſpects be a good and valid will, or it will not amount to a revocation of the former will. 2 *Ath.* 272. 1 *Peere Wil.* 343. Will revoking muſt be a good one.

With reſpect to the words of the ſtatute, burning, cancelling, *&c.* it has been held that theſe muſt be done, with an *intent to burn*, &c. to effect a revocation; for if done by miſtake, it is no revocation. 1 *Peere Wil.* 346. 3 *Wilſ.* 508. With intent.

And upon the principle that the revocation of a will depends upon the intention of the party, it has been held that the ſlighteſt tearing or obliterating is ſufficient to revoke, when joined with a declared intent of annulling the deviſe. 2 *Black, Rep.* 1043.

A ſubſequent deviſe to another perſon, though he may be incapable of taking, is a revocation of a precedent deviſe to a perſon who was capable of taking, as it ſerves to ſhew the intent of the teſtator to revoke the firſt deviſe, though the ſecond cannot take effect.

It often happens that there is a duplicate of a will made, and depoſited in the hands of an executor, or other perſon. Cancelling a duplicate.

In ſuch caſe, a cancelling of that part of the will which is in the poſſeſſion of the teſtator is a ſufficient revocation of both the parts, as well that in his own hands as the duplicate in the hands of the executor; they being both in fact but one will. But it is beſt that ſuch cancelling ſhould be before witneſſes. And ſo if a teſtator makes a ſecond will, and duly executes the ſame, it ſhall, without any thing further, revoke and make void the former will and duplicate. 1 *Peere Wil.* 346. *Prec. Chan.* 460.

Inconſiſtent wills.

Where a man, having made a will, afterwards makes another *inconſiſtent* with it, without expreſsly revoking the former, this is a revocation in law; the fact of making a new will, furniſhing a neceſſary inference, that the teſtator had mentally revoked the old one. 3 *Wilſ.* 511.

Cancelling the laſt will.

If a perſon, having made his will, by which he deviſes lands, makes another will, duly executed, which by this means revokes the former, and then keeps both wills by him, and afterwards cancels the *latter* will by cutting off his name and ſeal, or otherwiſe deſtroying the execution, and at his death both willls are found in his cuſtody, the *former* will *uncancelled*, and the *latter cancelled*; the former will ſhall, in this caſe, take effect, it being by the cancelling the latter rendered as valid as if no ſuch ſecond will had ever exiſted: but if the former will had been cancelled on the making the ſecond, and then the ſecond had been cancelled, neither of them could take effect; and the party ſhould be ſaid to die inteſtate.

Codicil may revoke part of a will.

A codicil will be a revocation of the will, if inconſiſtent with it; but ſo far only as it is repugnant to the particular diſpoſitions in the will, leaving it in all other reſpects undiſturbed. 1 *Vez.* 178, 186. 3 *Atk.* 552.

Marrying after making a will

It has been determined, that without an expreſs revocation, if a man who has made his will afterwards marries and has a child or children, this is a preſumptive or implied revocation of his former will which he made in his ſtate of celibacy, as well as to his real as his perſonal eſtate; and the above-mentioned ſtatute does not extend to this caſe, but he ſhall be ſaid to die inteſtate, the law ſuppoſing that he muſt mean to provide in the firſt place for his family, and diſtributing his eſtate for their benefit accordingly. This, however, being only a preſumptive revocation, if it appears, by any expreſſion, or other means, to be the intent of the teſtator that his will ſhould continue in force, the marriage will be no revocation of it. As in the

the caſe where a man deviſed an eſtate to a woman, whom he afterwards married, and when he died ſhe was with child of a ſon, yet the will was determined to be good, and not revoked by the marriage.

Though marriage, and the having of children, has been deemed a revocation of a will, yet it is only a preſumptive revocation; for, as already obſerved, if it appears to be the intent of the deviſor that his will ſhould continue in force, the marriage will be no revocation of it. 1 *Ld. Raym. Lugg. v. Lugg.* In what caſe a revocation.

If a man deviſes land to J. S. and afterwards bargains and ſells it to another, though this be not inrolled within ſix months, according to the ſtatute, conſequently nothing can paſs to the bargainee, yet this is a revocation of the will; becauſe here is a ſolemn act done, which plainly ſhews the intention of the teſtator to countermand the will. *Gilbert on Wills*, 101

Thus a *ſpecific* deviſe of *a leaſe* for lives is revoked by a ſubſequent renewal; for by the ſurrender of the old leaſe the teſtator is, in conſideration of law, entirely diveſted of all his preceding intereſt, and conſequently there remains none upon which the will can operate. 1 *Peere Wil.* 168. 575. 3 *Ibid.* 163. Deviſe of a leaſe.

And ſo of leaſes renewable on fines *&c.* 2 *Atk.* 593.

So where a truſtee deviſed by his will, a leaſehold eſtate under Magdalen College, Oxon, and after the making of this will, before his death, renewed his leaſe, by ſurrendering the old one, and taking a new leaſe. Determined by Lord Chancellor, that this was a revocation of his will. And though the teſtator, after the renewal, looking amongſt his papers, had ſaid, this is my will, that was held to be no republication. 5 *Bac. Abr.* 527, cites *MS. Rep. Sir Tho. Abney* v. *Miller*, in *Canc. Trin.* 1743.

But it is hardly neceſſary to obſerve, that if the renewed leaſe be not complete at the teſtator's death, as where it wants the college ſeal, the previous diſpoſition will not be hurt by the ſurrender. 2 *Atk.* 593.

Where a man was ſeized of a leaſe for three lives, which he deviſed, and afterwards ſurrendered the old leaſe and took a new one to himſelf and his heirs for three lives, it was decreed by Lord Chancellor King, that this renewal of the leaſe was a revocation of the will, as to this particular. So where a teſtator deviſed by his will a leaſehold eſtate, which he held under *Magdalen College*, and after When a renewal of a leaſe is a revocation of a will.

the making of his will, before his death, renews his leaſe, by ſurrendering the old one and taking a new leaſe; it was determined by the Lord Chancellor that this was a revocation of the deviſe. And thus it has lately been determined where a leaſehold eſtate was ſpecifically given and ſurrendered by the teſtator after having made his will.

Deviſing to perſons incapable of receiving.

If a man, after deviſing his eſtate to one, make a freſh will and deviſe it to the *poor of the pariſh*, or to a *corporation* not within the ſtatute, the latter deviſe, though incapable of taking effect, will notwithſtanding be a recovation of the former. 1 *Roll. Abr.* 614. 2 *Eq. Ca. Abr.* 359. 8 *Atk.* 72.

Giving a portion revokes a prior will.

I. S. by his will gives his daughter 500*l.* for her portion, and afterwards marries her to *A.* and gives her 300*l.* for her portion in marriage, and lived four years after without revoking his will. Afterwards the huſband is a bankrupt, and the aſſignees brought a bill againſt the father's executor for the 500*l.* or at leaſt to recover 200*l.* to make up the portion tantamount to the 500*l.* legacy. Lord Ch. J. Parker with great clearneſs held, that giving a daughter a portion by will, and afterwards a portion in marriage, is by the law of all other nations, as well as Great-Britain, a revocation of the portion given by the will; and diſmiſſed the bill with coſts. 1 *P. Wil. Rep.* 681. *Hartop* v. *Whitmore.*

Republication.

As the effect of a republication is to deviſe, and the ſtatute ſays that all "deviſes" of lands and tenements ſhall be in writing, *&c.* it muſt be conſtrued to extend to republications; the ſame ceremonies therefore which are neceſſary in executing an original will, muſt be obſerved in the act of republiſhing it. 1 *Vez.* 440. 9 *Mod.* 78.

And ſuch a republication has been held to ſupply any defect ariſing from an inability to deviſe at the time of making the original will, as where a perſon made a will of land during his minority, and re-executed it after he became of age, this was determined to have rendered the will valid. 1 *Sid.* 162. 1 *Keb.* 589.

Republication at common law.

Before the ſtatute of 29 *C. II.* the ſlighteſt circumſtance indicating the intention of the teſtator to confirm his will was a ſufficient republication; and as that ſtatute affects only eſtates of inheritance, the ſame rule ſtill applies to diſpoſitions of every other ſpecies of property.

In ſhort, any act or words of the teſtator, ſufficient to authorize a fair preſumption that he deſired his will ſhould remain,

remain, was at the common law, and ſtill is, in reſpect of property not within the ſtatute of frauds, a good republication.

I. S. by will deviſed to M. his wife 1000*l. per annum* for her life, to iſſue out of his real eſtate, his capital meſſuage at H. &c. To his ſiſter *E.* 200*l. per annum* for her life; and 1000*l.* to *L.* her daughter, for her portion; and after other legacies, he deviſed the reſidue of his real and perſonal eſtate to A, B, C, D, E, and F, and their heirs, executors, and adminiſtrators, on truſt to veſt the reſidue of his perſonal eſtate in lands of inheritance; and that his truſtees ſhould ſtand ſeized and poſſeſſed of his real and perſonal eſtate to the uſes of the will, during his wife's life: and after her deceaſe, if he ſhould die without iſſue, to the intent that his freehold and leaſehold eſtate, and the lands to be purchaſed, ſhould be ſettled to the uſe of the defendant G. for ninety-nine years; then to his firſt and other ſons in tail male, &c. Properly publiſhing a codicil is a re-publication of a will.

I. S. purchaſed ſeveral fee-farm rents, aſſart rents, and other lands and tenements, and then by a codicil, two days before his death, he recites that he made a will, dated Jan. 17th, &c. and then ſays, "I hereby ratify and confirm the ſaid will, except in the alterations hereafter "mentioned. The portion to my niece *L.* ſhall be made "up 6000*l.* and what I have given to my ſiſter and niece "ſhall be accepted by them in ſatisfaction of all they may "claim out of my real and perſonal eſtate, and on condi-"tion that they releaſe all right, &c. to my executors and "truſtees in my will named; and thus having provided "for my ſiſter and niece, I deviſe all my lands by me pur-"chaſed ſince my will, to my truſtees and executors in my "will named, to the ſame uſes, and ſubject to the ſame "truſts to which I have mentioned to deviſe the manor of "H. and the bulk of my eſtate; and I revoke that part "of my will, whereby I appoint A. B. and C. three of my "truſtees, in my will, and I deſire K. and N. to be two of "my truſtees, and deviſe my ſaid real eſtate to them accord-"ingly." Lord *Macclesfield* decreed that the will was confirmed by the codicil; that I. S. ſigning and publiſhing his codicil in the preſence of three witneſſes was a re-publication of his will, and both together made but one will; and by the ſaid will and codicil, his fee-farm rents, aſſart rents, and lands, contracted to be purchaſed, and all his real and perſonal eſtate (except the copyhold purchaſed before his will) did

did pass. On appeal to the lords, the decree was affirmed. *Comyns's Rep.* 381. *Acherley v. Vernon.*

Date of republication.

A will as to the disposition of land, and in some other circumstances, takes effect, or is hindered from doing so, according to its date, and it may be necessary sometimes, on certain occasions, as after mentioned, to renew it, as it were, or in fact to make a new will. And if the testator is exactly of the same mind, as to the method of the disposal of his property, and circumstances only require that the will should bear date at any particular time, the person who makes the will should call in three proper witnesses, (agreeable to the foregoing directions) and before them declare the signature to be his hand-writing, and use the same forms as in the original execution. And the three witnesses must sign their names to such new will or republication, mentioning the date thereof.

Effect of a republication.

The effect of a republication upon a will, is to give the words used therein the same operation as they would have had if the will had been made *at the time of republication*, and consequently to extend its operation to all property purchased subsequent to the will that is conveyed by such words. *Pow. Dev.* 683.

Example.

In case of republication, therefore, the question to be considered is, not what the testator had in contemplation, *at the the time of making his will*, but to what the words of the will extend, *at the time of publication*. On this principle it was held, that when a testator devised all his lands in *A.* and then purchased more lands in *A.* by republishing his will, the new-purchased lands passed together with the others. *Gouldsb.* 150. *Cro. Eliz.* 493.

If a man by his will devises land, and afterwards sells it to another, and re-purchases it, and then republishes his will, the land so sold and re-purchased shall pass as if it had never been sold; for the republication made it a new will, and the words of themselves were sufficient to convey the land, without any addition.

Devise of land to be turned into money for a charitable use not good.

Upon the construction of the statute 9 *G. II. c.* 36, it is already observed, that a devise of land to trustees to be turned into money, and the money to be laid out in a *charitable use* is not good; likewise that a devise of a mortgage or term of years, to be laid out in *a charity*, is void; and if money be given to be laid out in lands, this is expresly within the act; but that money given *generally* is not. Where a devise was of lands to be sold, and the residue of

the money after payment of debts, &c. to a charity, it was held void by the ſtatute. *Ambl. Rep.* 20.

If money be given to be laid out in lands, *or otherwiſe*, to a charitable uſe, it hath been determined that ſuch a deviſe is good, by reaſon of the words, *or otherwiſe*, as where a man made his will in theſe words: "I will and "deſire that my executors, within twelve months after my "deceaſe, do ſettle and ſecure, by purchaſe of lands of "inheritance, *or otherwiſe*, as they ſhall be adviſed, out "of my perſonal eſtate, one annuity, or yearly payment "of 50*l.* to be paid yearly, and diſtributed for ever, by "my executors, their heirs and aſſigns, among the poor "and indigent people of Leeke, in the county of Stafford, "in ſuch manner as they ſhall think fit. And my will "alſo is, that my executors do ſettle and ſecure one other "annuity of 5*l.* to be paid yearly to the vicar of Leeke "for the time being for ever, for preaching an annual "ſermon on the 12th day of October." Money left to be laid out in lands or otherwiſe.

Hence we may perceive how landed property is guarded from being affected by a deviſe or bequeſt to a charitable uſe; and yet no reſtraint is laid on money being bequeathed to ſuch uſe.

VII. *Of Codicils.*

A codicil is a ſupplement to a will, or an addition made by the teſtator annexed to and to be taken as part of a teſtament; being for its explanation or alteration, or to make ſome addition to, or ſubtraction from the former diſpoſitions of the teſtator. Definition of a codicil.

An executor cannot regularly be appointed by a codicil, yet may be ſubſtituted, according to the will of the teſtator.

A man may make divers codicils, and the firſt is of equal force with the laſt, if not contradictory to each other. *Godolph.* 1. *Swinb.* 14, 15.

The law relating to codicils agrees in general with that which relates to wills and teſtaments; like thoſe it may be either written or verbal; and where it is uſed, for the purpoſe of deviſing *real eſtates*, it requires the ſame ceremonies to attend its execution as an original *deviſe*; and the ſame latitude is admitted in its form and publication, when its object is the diſpoſition of *perſonal property* only, as is allowed in an original *teſtament*. In ſome reſpects, however, Codicils to be executed with the ſame ceremony as wills.

however, they differ; for though a man can regularly make but one will or teſtament, he may make codicils without number, and unleſs contradictory to one another they will all ſtand. *Swinb.* 15.

Codicils may be proved as wills.

If codicils are regularly executed and witneſſed, they may be proved as wills, and ſo if they are found written by the teſtator himſelf, they ought to be taken as part of the will, as to the perſonal eſtate, and proved in common form by witneſſes, to the hand-writing of the perſon making the codicil, and by giving an account when, where, and how the ſame was found.

Two codicils diſagreeing.

Where a teſtator leaves two wills, and it is uncertain for want of dates, which was laſt made, they will both be void; but if the ſame thing happens in reſpect of two codicils, and the ſame thing is given by one codicil to one man, and by another codicil to another, they ſhall divide the thing between them. *Swinb. Ib.*

Whenever a codicil is added to a will or teſtament, and the teſtator declares that the will ſhall be in force, in ſuch caſe if the will happens to be void for want of the forms required by law in the execution, or otherwiſe, yet it ſhall be good as a codicil, and ſhall be obſerved by the adminiſtrator.

And where there are two wills of different dates, the firſt is void; but a former codicil will be void only ſo far as it is contradicted by the latter. *Ibid.*

So again where two legacies are given to the ſame perſon, one in the former and the other in the latter part of the ſame will, he ſhall take only one of them; whereas, if they are given him by two codicils, or by a will and a codicil, they will both be effectual. And the reaſon of this diſtinction is founded on the principle of a codicil's being a *ſupplement* to the will; the eſſential nature of which is (unleſs otherwiſe expreſſed) to add to what has gone before.

VIII. *Duty of Executors and Adminiſtrators.*

What is an executor.

An executor is a perſon appointed by a teſtator, to carry into execution his will and teſtament after his deceaſe: and a deviſe of perſonal eſtate is not looked upon to be of any effect till the will is proved by the executor. An executor cannot give a will in evidence concerning perſonal eſtate, without producing the probate; for it is not a will till it has

has received the ſanction or allowance of the ſpiritual court; which court is to judge whether it is a will or not; and the temporal or common-law courts are not to look upon it as a will till probate be made.

An executor may be appointed, either by expreſs words in the will, or ſuch as ſtrongly imply ſuch appointment. *Wood. Inſ.* 320. How appointed.

For making an executor, it is not always neceſſary that the word *executor* be expreſſed; but it is ſufficient, if the teſtator's meaning do appear by other words of like ſenſe or import; as if the teſtator ſay, I commit all my goods to the diſpoſition of A. B.; or, I leave all my goods, or the reſidue of all my goods to A. B. or the like; for in theſe caſes he to whom all the reſidue is bequeathed is thereby underſtood to be made executor. *Swinb.* 247. The word executor not abſolutely neceſſary.

And the appointment of an executor was formerly thought eſſential to every will; but, though it be incomplete without an executor, it has of late been held to be effectual to all material purpoſes. 2 *Chanc. Rep.* 112. *Raym.* 1282. How far eſſential.

It ſeems admitted, that the king may be appointed executor; but as he is preſumed to be ſo far engaged and taken up with the public and arduous affairs of the kingdom, as not to have leiſure to attend the private concerns of any particular perſon, the law allows him to nominate ſuch perſons as he ſhall think proper, to take upon them the execution of the truſt, againſt whom all perſons may bring their actions; alſo the king may appoint others to take the accounts of ſuch executors. 4 *Inſt.* 335. *Godol.* 76. The king may be appointed executor.

Accordingly we find that Katherine, queen dowager of England, mother of Henry VI, who died June 2, 1436, made her will, and thereof appointed Henry VI ſole executor, and that the king appointed Robert Rolleſton keeper of the wardrobe, John Merſton, and Richard Alreed to execute the ſaid will, under the inſpection of the cardinal, the Duke of Glouceſter, and the Biſhop of Lincoln, or any two of them, to whom ſuch executors ſhould account. 4 *Inſt.* 335.

A man may appoint two or more perſons to be joint executors, and they are accounted in law but as one perſon. Such joint executors ſhall not be charged by the acts of their companions any further than for effects actually come to their hands. *Moor* 620. *Cro. Hig.* 318. But if two How far joint executors may be charged.

or more executors join in a receipt (in writing) and one of them actually receives the money, each is liable to the whole as to creditors at law, but not as to legatees or next of kin. *Salk.* 318.

If joint executors, by agreement among themselves, agree that each shall intermeddle with a certain part of the testator's estate, yet each shall be chargeable for the whole (to creditors) by agreeing to the others' receipts. *Hard.* 314.

Who may be executors.

Whoever is capable of making a will, is capable of being an executor: and many others, who cannot make a will, may yet be executors.

Married women, infants.

Married women, infants unborn, (legally termed *in ventre sa mere*) may be made executors, though an infant cannot act as executor till the age of seventeen; till which time administration must be granted to some other person, during such infancy or minority. *Wentw. Ex.* 342.

A married woman executrix.

With respect to making a married woman executrix, attention should be had to the probity of the husband, as the wife in such case cannot act alone, and if the husband commit waste, the wife will not be liable: and previous to making an executor, due attention should be had to his probity, as well as his circumstances, as great power devolves on him on the testator's death, the personal estate vesting in him immediately thereon *Benyon* v. *Collins*, 1788. *Browne's Chan. Rep.* 329.

Infant executors.

All things that an infant executor doth after he attains the age of seventeen, though before the age of twenty-one, if done according to the office and duty of an executor, will hold good, and shall bind him; as paying of debts, suing for and recovering debts, selling the testator's goods, &c. *Offic. of Ex.* 215, 216. *Cro. Car.* 490. 1 *Jon.* 400. *Moor*, 852. *And.* 177. 5 *Co.* 27.

Aliens.

An alien, though incapable of making a will, may be an executor. *Ib.* 15. *Cro. Car.* 9.

An excommunicated person cannot be an executor or administrator, for by the excommunication he is excluded from the body of the church, and is incapable to lay out the goods of the deceased to pious uses. *Co. Lit.* 134. *Swinb.* 349. *Godolph.* 85.

Bankruptcy does not invalidate the appointment of the executor, but the court of Chancery will appoint a receiver of the testator's effects, in order to protect them; as it also

will upon the application of a creditor, if the executor appears to be wasting the assets. 3 *Brown. Ch. Rep.* 365.

An administrator can do nothing before letters of administration are issued, but an executor may do many acts before he prove the will, as release, pay or receive debts, assent to legacies and demise lands. 2 *Black. Rep.* 624. What an executor can do before probate of the will.

And if before the will be proved, the day occur for payment upon bond made by or to the testator, payment must be made to or by the executor though no will be proved, upon the like pain of forfeiture as if the will were proved. Also, an executor may, before probate, sell or give away any of the goods or chattels of the testator. *Went. Off. Exec.* 34, 35.

And the executor, for goods of the testator taken from him, or a trespass done upon the lease land, or a distraining or impounding of goods or cattle, may maintain, before the will be proved, actions of distress, or replevin, or detinue; for these actions arise upon the executor's own possession. But before the proving of a will, an executor cannot maintain a suit or action of debt, or the like; and the reason is, for that he must then shew forth the will, proved under the seal of the ordinary. What he cannot do till the will has been proved.

In general, an executor is a complete executor before probate to all purposes but bringing of actions; so that he may release an action, assent to a legacy, may be sued, may alienè, or otherwise intermeddle with the goods of the testator. For by administering (that is, if one do either pay debts of the testator, or receive debts, or make acquittances for them, or demands the testator's debts, as executor, which are acts of administering) the executor hath accepted and taken upon him the whole administration before the probate; and is thereby entitled to receive the debts due to the testator; and all payments made to him are good, and shall not be defeated, although he should die and never prove the will. *Went. Off. Ex.* 41. 1 *Salk.* 306, 307.

As the executor may receive debts, release debts, and do other acts before the will be proved; so on the other hand an executor may be sued for debts of the testator before the will be proved; unless he refuses the executorship in due manner, so as administration may be granted, and there may be somebody suable for the testator's debts. Executor may be sued before proving.

Though a person is appointed an executor by a will, he cannot be compelled to undertake the executorship against his inclination, unless he has, after the death of the testator, Person appointed not compelable to undertake

the office of executor.

meddled with the goods as executor; for then he is not only to be compelled to perform the office of an executor, but even if he ſhould refuſe ſo to do, his refuſal would then be void, and he ſhould be charged as executor; and therefore if the executor named in the will is reſolved not to act, but to refuſe the executorſhip, he muſt be particularly careful that he does not adminiſter the goods of the deceaſed as executor; for if he has once adminiſtered as executor, he may at any time after be compelled to undergo the burthen of that office, and may be ſued as ſuch, by the creditors of the teſtator, though he cannot ſue any perſons debtors to the teſtator, until he proves the will, and which he muſt then do in his own defence.

Refuſal muſt be entered and recorded.

A refuſal to take the executorſhip, by word of mouth only, is not ſufficient; it muſt be entered and recorded in the eccleſiaſtical court.

What acts are deemed an acceptance of the executorſhip.

A perſon is ſaid to adminiſter as executor, ſo as thereby to be compelled to accept the executorſhip, when he performs thoſe acts which are proper to an executor, as by paying the debts due from the teſtator, or receiving any debts due to him, or giving acquittances for the ſame, with other ſuch like acts; but generally whoever, as a mere treſpaſſer, takes poſſeſſion of any of the goods or effects of the teſtator, and converts the ſame to his own uſe, and not to the uſe of the teſtator (as to the payment of his debts or legacies) does not adminiſter as executor. The moſt ſafe courſe, however, is not to meddle at all, but to refrain entirely from any diſpoſition whatever of the teſtator's goods. Yet even where a perſon has not meddled with the goods of the teſtator at all, and is therefore not compellable to accept the executorſhip, yet if a legacy is left to him as executor by the will, he may be compelled either to act as executor, or on refuſal to loſe his legacy.

A perſon may take time to conſider.

But he may take time to conſider, and the ordinary may, in the mean time, grant letters to any diſcreet perſon, to collect in the effects of the deceaſed. *Cro. Eliz.* 92. This makes him neither executor nor adminiſtrator, his only buſineſs being to keep the goods in his ſafe cuſtody, and do other acts for the benefit of perſons entitled to the property of the deceaſed.

How far an executor repreſents the teſtator.

The law ſubjects the executors to every perſon's claim and action, which he had againſt the teſtator, except as to treſpaſs *vi et armis*, &c. committed by the teſtator; for which reaſon the executor is ſaid to be the teſtator's aſſignee,

aſſignee, and to repreſent the perſon of the teſtator: but for the perſonal wrongs done by the teſtator to the perſon, or goods, &c. of another, the executor doth not repreſent him; becauſe perſonal actions die with the perſon. *Co. Lit.* 209: 9 *Rep.* 89.

The danger of an executor's ſuſtaining detriment or loſs by taking upon him the executorſhip, will chiefly ariſe from the inſufficiency of the teſtator's goods and chattels for ſatisfying debts and legacies; eſpecially if he is not careful in obſerving the rules and orders for paying the ſame.

Dangers attending the taking the office of executor.

When the teſtator's goods and chattels are not ſufficient to pay his debts and legacies, there are divers ways whereby an executor may endanger his own eſtate, and ſubject it to anſwer damages; as, 1. When he beſtows more upon the funeral of the deceaſed than is proper, and for which a very ſmall ſum ſeems to be allowed againſt creditors. 2. When he pays legacies in money, or aſſents to legacies before the debts are paid, and has not enough beſides to pay the debts. 3. When he does not pay the debts in due order, but pays them firſt that he ſhould pay laſt, and he has not enough to pay them all. 4. When he releaſes a debt or duty due to the deceaſed before he receives it; or, when the goods of the deceaſed being taken from him, he releaſes to him that takes them the action whereby he might have recovered them. 5. When he ſells the goods of the deceaſed much under value, eſpecially if it be with covin; as, to his near friends, to his own uſe, to have money under hand, or the like; but otherwiſe to ſell them under value, eſpecially when he cannot conveniently make more of them, is no waſte. All theſe, and ſuch like acts as theſe, are ſaid to be a waſte in an executor or adminiſtrator; and being diſcovered againſt him by return of the ſheriff, it will produce this effect, to make the executor or adminiſtrator chargeable for ſo much as he hath miſemployed and waſted *de bonis propriis*, that is, of his own proper goods: ſo that any creditor may charge him for the debt due to him from the teſtator, as for his own proper debt, and for ſo much the execution ſhall be made againſt him upon his own body, lands, and goods; and yet ſo as one executor or adminiſtrator ſhall not be charged for the waſte of another; for if there be many executors, and one of them only doth commit the waſte, he only ſhall be puniſhed for the waſte. But when two executors join in an acquittance, but only

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one receives the money, both are chargeable for it. 1 *P. Will.* 141. *Shep. Touch. 4th Edition*, 463, 464. *Salk.* 318. *Lovelass*, 206.

Creditor appointing his debtor executor.

If a creditor constitutes his debtor his executor, it is a release or discharge of the debt, whether the executor act or not, provided, however, there be assets sufficient to pay the testator's debts; for though the discharge of the debt shall take place of all *legacies*, yet it would be unfair to defraud the testator's creditors of their just debts by a release, which is absolutely voluntary 2 *Black. Com.* 511.

Debtor appointing a creditor executor.

A debtor may make his creditor executor, and in such case the executor may retain so much of the testator's assets, as will satisfy himself; but this must be understood where his debt is in an equal degree with other creditors; for if he be a simple contract creditor, he cannot retain against a creditor by specialty, or any other of a superior nature. *Plow.* 185. *Godolph.* 115. 1 *Salk.* 304. *Cro. Car.* 372.

So if administration be granted to a creditor, he may retain so much of the intestate's assets, as will satisfy himself; but this also must be understood as to creditors in equal degree. *Godolph.* 115. *Off. of Ex.*

Where a man makes two executors, and dies, and one of them proves the will in the name of them both, without the consent of the other; yet this is not any administration by him who refused the executorship, but he may plead to any action brought against him as executor, that he never was executor; for neither the will or probate make him so, if he does not administer.

Executors refusing to act, the bishop may commit administration with the will annexed.

When all the executors named in the will refuse to act, the bishop of the diocese or ordinary may commit administration, with the will of the deceased annexed; and in such case the person to whom this administration is granted is called the administrator of the deceased with the will annexed, and may administer the goods; and his duty is then very similar to that of an executor. This authority of the administrator, and any act done by him in pursuance of it, is good and effectual in law, till the executor undertakes the executorship, and proves the will; as it is said he may even then do; and that in such case the ordinary may afterwards revoke the administration: but the ordinary cannot certainly repeal an administration at his pleasure; and the rule with respect to this seems to be, that an administration may be repealed, although not arbitrarily, yet

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there shall be just cause for so doing, of which the courts of law are to judge; as if the administrator should happen to become insane, insolvent, or the like. And so if the person who is next of kin, at the time of the death of the intestate, happens to be incapable of administering, by reason of any legal impediment, (attaint or excommunication for example) and the ordinary commits administration to another; if the next of kin afterwards becomes capable, the ordinary may repeal such administration, and commit it to the next of kin.

Will omitting the appointment of executors.

If a man makes his will without appointing any executors, or the executors named are unknown, and cannot be found out, or are incapable of acting, or disabled from being executors; or in case the executor is dead before the testator, or dies after the testator and before proving the will; in all these cases an administration must be granted by the ordinary, with the will annexed, to the person to whom the residue is bequeathed by the will, and if this person were the deceased executor, then to his executor or personal representative. If there were no devise of the residue, then to such persons as would be entitled to administration in case there had been no will: In this latter case of dying without any will, administration shall be granted to such persons as are appointed by the several statutes, and who those persons are we will immediately proceed to explain; first observing, that in all cases (except where there is a controversy depending whether there is a will or not) the ordinary may be compelled to grant administration to the person who is entitled to it; and that if he refuses, a writ of mandamus will be granted by the Court of King's Bench, commanding him to grant it, though the person entitled to administration may if he pleases refuse to take it upon him, and the ordinary has no power whatever to compel him to accept it.

Executor to bury the testator.

The first thing necessary for an executor to do is to bury the deceased, in a manner suitable to the estate which he leaves behind. *Necessary* funeral expences are allowed in preference to all other debts and charges; but if the executor or administrator is extravagant in the funeral, it is a species of waste of the effects of the deceased, which he is not justified in, and which shall only be prejudicial to himself, and not to the creditors or legatees of the deceased.

And prove the will.

His next duty is to prove the will of the deceased, and which

which muſt alſo be done by the adminiſtrator, if there is any will, and where the adminiſtrator is appointed during the minority or abſence of an executor. This is done either in common form, which is upon the oath of the executor or adminiſtrator himſelf, and of the witneſſes to the will, before the ordinary or his deputy; or in caſe the validity of the will happens to be diſputed, then it is proved in a more ſolemn form of law. In this laſt caſe it is requiſite that all ſuch perſons as have any intereſt in the eſtate of the deceaſed, that is to ſay, his widow and next of kin, to whom the adminiſtration of his goods ought to be committed, if he had died without will, muſt be cited or ſummoned to be preſent at the probation and approbation of the will, in whoſe preſence the will is to be exhibited to the judge, and a petition to be made by the party who produces the will and demands probate of it; then the witneſſes to the will, and others if neceſſary, are received and ſworn accordingly, and are all examined privately and ſeparately, not only upon the allegation or articles, made by the party producing them, and who requires the probate to be granted him; but alſo upon interrogatories or queſtions in writing put to them by the adverſe party ſummoned for that purpoſe; and the depoſitions of the witneſſes thus taken are then committed to writing, and afterwards publiſhed; and if the proof is ſufficient, the judge, by his ſentence or decree, pronounces for the validity of the will, and a probate thereof is accordingly granted to the perſon requiring it. *Swinb.* 448. *Nelſ. Abr.* 1301. *Godolph.* 65.

The reaſon of proving the will ſolemnly.

This manner of ſolemnly proving the will is uſed for the greater ſecurity of the executor, as if the will is at firſt only proved in common form, the widow and next of kin of the deceaſed may call on the executor afterwards for this ſolemn proof, when perhaps the witneſſes to the will are dead, and many difficulties may ariſe to him. It is alſo uſual, when the executor has any conſiderable part of the eſtate and effects left him, to prove the will thus ſolemnly in the firſt inſtance, and which the executor may always do at his own will and pleaſure, citing the widow and next of kin in particular, and all perſons pretending intereſt in general; and then the will can never afterwards be diſputed. If, however, the will is proved in common form only, but remains undiſputed for a certain number of years (it is ſaid thirty years are neceſſary) its validity cannot then

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be called in queſtion; but it ſhall be ſuppoſed to have been ſolemnly and inconteſtibly proved at firſt.

When the will is proved, the original is to be depoſited in the regiſtry of the ordinary before whom it is proved; and a copy of it in parchment is made out, together with a certificate of its having been proved, under the ſeal of the ordinary, and delivered to the executor or adminiſtrator, all which together is commonly called the probate. If there is no will, the perſon entitled to be adminiſtrator muſt take out letters of adminiſtration, which are alſo given under the ordinary's ſeal, and by which a power like that of an executor is veſted in him to collect and adminiſter; that is, to diſpoſe of the goods of the deceaſed according to law, and he then takes the oath, and enters into a bond for the faithful performance of his truſt, in purſuance of the ſtatute of 22 & 23 *C. II.* After probate the will is to be depoſited in the regiſtry of the ordinary.

If all the goods of the deceaſed lie within the ſame juriſdiction, the probate is to be made, or adminiſtration taken out, before the ordinary; but if the deceaſed had goods or chattels to the value of *five pounds* in two diſtinct dioceſes or juriſdictions, then the will muſt be proved, or adminiſtration taken out before the archbiſhop of the province in which the deceaſed died, by way of ſpecial *prerogative*. Whence, ſays Sir W. Blackſtone, the offices where the validity of ſuch are tried, are called prerogative offices.

Five pounds in thoſe days were equal to about 70*l.* of our money. 2 *Black. Com.* 509.

The executor or adminiſtrator ſhould immediately proceed to make an inventory or catalogue of all the perſonal eſtate, goods, and effects, of the deceaſed; as well thoſe in his poſſeſſion, *viz.* ready money, money in the funds, goods, cattle, ſtock on farm or in trade, *&c.* As alſo all debts owing to the deceaſed, and all ſecurities for money, and other valuable property whatever; which inventory the executor or adminiſtrator is to deliver into the ordinary, upon *oath*, whenever it ſhould be lawfully required. This inventory ſhould be made expeditiouſly and accurately, in order to ſhew what effects of the deceaſed he in fact ever has the poſſeſſion of; as on neglect of ſo doing he is liable to be charged with the payment of all debts and legacies, and ſubjects himſelf alſo to the imputation of having embezzled the eſtate of the deceaſed. In this inventory, the executor is not to include the neceſſary wearing apparel of the widow (if any); ſhe being entitled to retain To make an inventory.

tain that, and also such watches, rings, and jewels, as she used to wear in her husband's life-time, and as are undisposed of by his will: these are called her paraphernalia, and (unless on a deficiency in the husband's estate, in which case they must be included in the inventory) are not liable, however valuable they may be, to answer his debts, and are to be reserved to the widow in preference to all legacies. It has even been determined, that a husband cannot by his will dispose of such jewels of his wife, as are suitable to her rank and situation.

Goods and chattels to be valued.

The inventory should also specify the value of the effects, although this is not binding on the executor or administrator, nor is it very much regarded at the common law; for if it is too high, it shall not be prejudicial to him; and if it is too low, he shall reap no advantage from it: but the real value of them is to be found by a jury, whenever it may come in question, on any dispute whether the executor has fully administered, or has any effects left in his hands, or not. The time for exhibiting this inventory to the ordinary is left entirely to him.

The executor's oath.

The executor's oath, previous to obtaining the probate, is usually in this form: "You shall swear that you believe "this to be the true last will and testament of A. B deceased: "that you will pay all the debts and legacies of the deceased, "as far as the goods shall extend, and the law shall bind "you; and that you will exhibit a true, full, and perfect "inventory of all and every the goods, rights, and credits "of the deceased, together with a just and true account, "in the registry of the court of , when you "shall be lawfully called thereunto." You also swear, that you believe the whole of the goods, chattels, and credits, of or belonging to the said A. B. at the time of his death, did not in value exceed the sum of *l.* "So help "you God."

To get in all the effects.

The executors or administrators are, with all convenient speed, to collect in, as soon as they conveniently can, all the goods and chattels so inventoried.

Legal assets.

The payment of debts, according to their priority, applies only to *legal* assets, that is to such effects of the testator as can be recovered in a court of law. 2 *Atk.* 50.

Equitable assets.

Equitable assets are such as are recoverable only in a court of equity.

Order of payment of debts.

The executor or administrator is to pay the debts of the deceased, according to the rules of priority established by law,

law, for otherwiſe if there ſhould be a deficiency of aſſets, he will be compelled to anſwer thoſe of a higher out of his own eſtate

1ſt. He is to diſcharge the funeral charges, the expence of proving the will, and other neceſſary expences incurred by the execution of his truſt. Funeral expences.

2. Debts due to the king on record or ſpecialty. 1 *And.* 129. Debts to the king.

3. Debts required by particular ſtatutes to be preferred to others.

Theſe are principally forfeitures for not burying in woollen, by 30 *C. II, c.* 3.; money due from overſeers of the poor for rates, by the 17 *G. II, c.* 38: and money due to the poſt-office for letters, by 9 *Ann. c.* 10.

Debts due by the evidence of a court of record, as judgments (if properly docquetted according to 4 and 5 *W. & M. c.* 20); ſtatutes and recognizances; or thoſe recognized by a decree of a court of equity; and alſo debts due on mortgage. *Cro. Car.* 363. 4 *Co.* 63. 3 *Peere Wil.* 401. Debts on judgments, &c.

Debts due to individuals on ſpecial contract, as debts due on bond, or other inſtrument under ſeal, and alſo rent in arrear. *Wentw. c.* 12.

Special bail is not required of adminiſtrators or executors, in any action brought againſt them for the death of the inteſtate; except where they have waſted the goods of the deceaſed: nor ſhall coſts be had againſt them. *Cro. Eliz.* 503. *Yelv.* 168. 1 *Salk.* 207. Not even on a writ of error where judgment is affirmed. Where an adminiſtrator is plaintiff, he muſt ſhew by whom adminiſtration was granted; for that only entitles him to the action; but it is not neceſſary that a defendant ſhould. 1 *Lutw.* 301. Special bail not required of adminiſtrators or executors.

The adminiſtrator is compellable to prefer debts by ſpecialty due to individuals, to debts of a leſs degree, only ſo far as he has legal notice of them; but debts on record he muſt take notice of at his peril. 2 *Bac. Abr.* 43.

Debts on ſimple contract, as debts ariſing by mere verbal promiſe, or by writing not under ſeal, as notes of hand, &c.; and amongſt theſe wages due to ſervants are to be firſt paid. 1 *Roll. Abr.* 927.

But if no ſuit be commenced againſt an executor or an adminiſtrator, he may pay any one creditor of equal degree the whole debt, though there ſhould be inſufficient remain-

ing to ſatisfy the reſt; for till ſuit commenced, he has no legal notice of the debt. *Dy.* 32. 2 *Leo.* 60.

And on the principle of the perſonal eſtate being the proper fund for payment of debts, a mortgage made by the teſtator muſt be diſcharged by the executor or adminiſtrator out of the perſonal eſtate, if there be ſufficient to pay the reſt of the creditors and legatees, for the mortgage muſt have increaſed the perſonal eſtate to that extent. 2 *Cox, Peere Wil.* 664. 2 *Brow. Ch. Rep.* 101.

Executor may pay himſelf his whole debt firſt;

Among debts of equal degree, the executor or adminiſtrator may pay himſelf his whole debt firſt, by retaining in his hands the amount of his debt. But he is obliged to pay all debts of a higher nature before he can retain his own of an inferior one; being only allowed this privilege againſt ſuch as have no better ſecurity than himſelf. But an executor of his own wrong is not allowed to retain his own debt, for this might tend to encourage creditors to ſtrive who ſhould firſt take poſſeſſion of the goods of the deceaſed, and would beſides be taking advantage of his own illegal act, which is contrary to the rule of law. If a creditor appoints one who is his debtor to be his executor, the debt is diſcharged, whether the executor acts or not; provided there are effects enough beſides to pay all the teſtator's debts: for though this diſcharge of the debt ſhall, in this caſe, take place of all legacies, yet it would be unfair to defraud the teſtator's creditors of their juſt debts, by a releaſe which is abſolutely voluntary, and without any conſideration. If no ſuit is commenced againſt the executor or adminiſtrator for any debt due from the deceaſed, he may pay any one creditor *in equal degree* his whole debt, though he ſhould in conſequence have nothing left for the reſt; for without a ſuit commenced, the executor or adminiſtrator has no *legal* notice of the debt, (except debts due on record, which he is bound to take notice of without ſuit.)

but not an executor in his own wrong.

If a teſtator is greatly indebted, and the effects are not ſufficient to pay every one their full demand, and the executor is deſirous to be rid of the eſtate, but is afraid of many diſputes and controverſies for priority among the creditors; his ſafeſt way is to file a bill in Chancery againſt all the creditors; in order that they may, if they pleaſe, conteſt each other's debts, and diſpute who ought to be preferred in payment; and on a decree obtained, the executor

cutor will be fully justified in paying them according to the directions given thereby.

When the debts of the testator or intestate are discharged, the legacies are next to be paid by the executor so far as his assets will go. 2 *Vern.* 434. Legacies

Legacies are to be paid after debts; and where there is no time limited for paying a legacy, the executor has one year after the testator's death for paying it. It is held that the statute of limitations is no bar to a legacy, although it may have been due twenty years before demanded. Legacies to be paid next after debts.

With respect to legacies the executor cannot, as in case of debts, give himself the preference. 2 *P. Wil.* 25. Legatees have no preference.

A legacy is a bequest or gift of goods, money, or chattels, by will or testament; and the person to whom it is given is styled the legatee, which every person is capable of being unless particularly disabled by the common law or statutes, as before-mentioned. A legacy defined.

This bequest, being of goods and chattels, vests in the executor, and the legacy is not perfect without his assent; for if I have a general legacy of 100*l.* or a *specific* one of a piece of plate, or horse, or the like, I cannot in either case take it out without the consent of the executor, whose business it is first to see whether there is a sufficient fund left to pay the debts of the testator, to which the personal estate is always liable. And if there be a deficiency of *assets*, all the general legacies shall abate proportionably, in order to pay the debts; but a *specific* legacy is not to abate or allow any thing by way of abatement, unless there are not sufficient without it. So upon the same principle, if the legatees have been paid their legacies, they are afterwards obliged to refund a ratable part, if debts should come in more than sufficient to exhaust the residue of the estate, after the legacies paid, *Co. Lit.* 111. 2 *Black. Com.* 512.

A specific legacy, says Lord Hardwicke, is a bequest of a particular chattel, specifically described and distinguished from all other things of the same kind, or (in other words) an individual legacy. Money therefore, if sufficiently distinguished, may be the subject of a specific bequest, as, money in a certain chest.—So of stock.—So a bequest of part of a specific chattel may be equally a specific legacy. On the other hand, a mere bequest of *quantity*, whether of money or any chattel, is a *general* legacy. What is a specific, and what a general legacy.

gacy, as of a quantity of ſtock, and where the teſtator has not ſuch ſtock at his death, it is a direction to the executor to procure ſo much ſtock for the legatee. *P. Wil.* 540. *4th Ed.*

Perſonal annuities given by will are general legacies, and a deviſe of an annuity for life charged on the perſonal eſtate, were there is a deficiency of aſſets, ſhall abate in proportion with the other legatees. *Ath.* 693.

A ſpecific legacy has in ſome reſpects the advantage, and in others the diſadvantage of a general legacy. As there is a benefit one way to a ſpecific legatee, that he ſhall not contribute, ſo there is a hazard the other way: for inſtance, if ſuch ſpecific legacy (being a leaſe) be evicted, or (being goods) be loſt or burnt, or (being a debt) be loſt by the inſolvency of the debtor, in all theſe caſes ſuch ſpecific legatee ſhall have no contribution from the other legatees, and therefore ſhall pay no contribution towards them. 1 *P. Wil.* 540.

Where one ſeized in fee owes debts by bond, and deviſes lands to the heir in tail, and gives ſeveral legacies, after which he dies, leaving the heir his executor; the heir with the perſonal eſtate pays off the bond debts, by which means there are not aſſets to pay the legacies; the legatees bring their bill, praying to ſtand in the place of the bond creditors, and to be paid out of the land deviſed to the eldeſt ſon. The court held the legatees to be without remedy, the land being (ſpecifically) deviſed in tail to the heir; otherwiſe had the land deſcended to ſuch heir in fee. So though the court will marſhal the aſſets in favour of a ſimple contract creditor, and (generally ſpeaking) in favour of a legatee, yet where ſuch legatee is a pecuniary one, he will not be relieved by being permitted to come in the place of bond-creditors upon the land in the hands of a deviſee thereof. *P. Wil.* 201, 678, 204.

Where day of payment is paſt, the penalty of a bond is the ſum due at law, but where the day of payment is not come, the ſum in the condition is the debt, and the executor cannot cover the aſſets any farther. The *Bank of England v. Morrice*, widow. Annually 224.

A ſpecific legacy is not to be broken into in order to make good a pecuniary one; much leſs ſhall pecuniary legatees, on a deficiency of aſſets, have any remedy for their legacies againſt a deviſe of land.

The court will marſhal aſſets in favour of legatees, where ſpecialty

ſpecialty creditors exhauſt, as againſt the heir in reſpect of eſtate deſcending; and againſt a reſiduary deviſee, but not againſt a ſpecific deviſee. *Hanby* v. *Roberts*, *Amb. Rep.* 127.

It is ſaid to be a general rule, that if the legatee die before the teſtator, the legacy will (unleſs the contrary be expreſſed) be a lapſed legacy, that is, will be loſt, and ſink into the reſidue of the teſtator's eſtate; and this is more particularly the caſe, in favour of the heir, where it is charged upon a *real eſtate*. 1 *Ath.* 50. 2 *Peere Wil.* 601. Legatee dying before the teſtator.

But there are many exceptions to this rule; and wherever it can be collected from the expreſſions or general import of the will, that it was the teſtator's intention to make it a veſted legacy, it will be ſo, and go, in caſe of the death of the legatee, to his perſonal repreſentatives. 1 *Peere Wil.* 457. *Co. Lit.* 237.

The ſpiritual court, and Court of Chancery, are the courts where legacies are ſued for, the latter exerciſing a concurrent juriſdiction with the former, as incident to ſome other ſpecies of relief prayed by the complainant; as to compel the executor to account for the teſtator's effects, or to aſſent to the legacy, or the like; and a bill may be filed in the Court of Exchequer for a legacy. 3 *Black. Com.* 98. In what courts legacies are ſued for.

Beſides theſe bequeſts made by a man's laſt will or teſtament, there is alſo permitted another death-bed diſpoſition of property, which is called a diſpoſition *cauſa mortis*, i. e. in contemplation of death; which is where a man in his laſt ſickneſs delivers, or cauſes to be delivered, to another ſome goods, *&c.* to keep in caſe of his deceaſe. 2 *Black. Com.* 513.

Where a bond for 100*l.* was given by one Spackman to Sarah Bailey, which Sarah Bailey delivered to the defendant, ſaying, "In caſe I die, it is your's, and then you "have ſomething." Sarah Bailey died inteſtate, and her adminiſtrator brought a bill to have the bond delivered up. By Lord Chancellor Hardwicke: This is a ſufficient *donatio cauſa mortis*,, or *gift in caſe of death*, to paſs the equitable intereſt of this bond upon the inteſtate's death. The queſtion in this caſe was, whether the nature of the property was capable of being ſo given. His Lordſhip held it might, as well as a ſpecific chattel; though no legal property paſſed thereby, nothing but the paper, a bond being evidence of a debt; and the intent being to give the debt, Bond in caſe of death.

not the paper, he held it a good donation *mortis causa*, comparing it to the property which passed by assignment of a bond, which passed nothing in point of law, and the assignee must make use of the other's name for recovering on it. 3 *Atk.* 214.

Receipts for South-sea stock.

But in the case of Ward and Turner, it was held by Lord Hardwicke, that a delivery of receipts for South-sea annuities was not sufficient, though there was strong evidence of the intent; and that it could not be done without a transfer, or something amounting to that. 2 *Vezey*, 431.

Bonds, drafts upon a banker, bank notes, and bills payable to bearer, have been held to pass by this mode of disposition; but promissary notes or bills of exchange, being payable at a future day, are choses in action, and cannot pass by delivery. 2 *Vez.* 431. 3 *Peere Wil.* 357.

Surplus to be paid to the residuary legatee.

When all the debts, and in case of any will, all the legacies given by such will are discharged, the surplus or residue must be paid to the residuary legatee, if any is appointed by the will. And if no residuary legatee is named, it was long a settled notion that the surplus devolved to the executor, for his own use, by virtue of his executorship. But whatever ground there might have formerly been for this opinion, it is now to be understood with this restriction; that although where the executor has no legacy at all given him by the will, the residue, after payment of debts and legacies, shall generally be his own, yet wherever there is sufficient on the face of the will, (as where the executor has a competent legacy bequeathed him for his trouble) from which it may be implied that the testator did not intend his executor should have it, the residue of the estate thus undevised shall be distributed among the next of kin to the testator; the executor then standing upon exactly the same footing as an administrator; who is in all cases where there is a will bound to distribute the residue, after payment of debts and legacies, among the next of kin to the deceased; and where there is no will, the whole effects of the deceased, after payment of his debts, are to be distributed in the same manner.

By law the appointment of an executor vests in him beneficially all the personal estate of the testator not otherwise disposed of; but wherever Courts of Equity have seen, *on the face of the will*, sufficient to convince them that the testator did not intend the executor to take the

surplus,

ſurplus, they have turned the executors into truſtees for thoſe on whom the law would caſt the ſurplus, in caſe of a complete inteſtacy, *i. e.* the next of kin; as where the executors are expreſsly called executors *in truſt*, or where any other expreſſions occur, ſhewing the *office* only to be intended them, and not the beneficial intereſt. 2 *Vern.* 99: 2 *Atk.* 18: 2 *Bro. C. R.* 634. So where there is a reſiduary clauſe, but the name of the reſiduary legatee is not inſerted. 2 *Vez.* 91, 495. Or where the reſiduary legatee dies in the life-time of the teſtator. *Amb.* 769: 3 *Bro. C. R.* 28.

So a pecuniary *legacy* to a ſole executor affords a ſufficient argument to exclude him from the reſidue; as it is abſurd to ſuppoſe a teſtator to give expreſs *a part* of the fund to the perſon he intended to take the whole. 2 *Vern.* 676. See Cox's Edition of *P. Wm's Reports*, *vol.* I. *p.* 550. *n.*

Intereſt due on legacies veſted.

In all legacies which are veſted on the teſtator's death, though payable at a future day, where they are charged on land, or conſiſt of money in the funds, both of which yield an immediate and conſtant profit, intereſt ſhall be paid on them to the legatee from the teſtator's death to the time of payment. But if the legacies are charged only on the perſonal eſtate generally, which cannot be immediately got in, they ſhall then carry intereſt only from the end of one year after the death of the teſtator; which time the executor or adminiſtrator is allowed to ſettle his affairs in.

When a legacy is given to one conditionally only, as in caſe he do or omit any particular act, the legacy is not due or payable until the condition is performed; and therefore if the legatee dies before performance of it, the legacy is in general extinguiſhed.

Where no time is aſcertained for the payment of a legacy.

It has been determined, that where a legacy is deviſed generally, and no time aſcertained for the payment, and the legatee be an infant, he ſhall be paid intereſt from the firſt year after the teſtator's death; but if the legatee be of full age, he ſhall only have intereſt from the time of his demand after the year; for where no time of payment is ſet, it is not payable but upon demand, and the legatee ſhall not have intereſt but from the time of his demand, except he be an infant, to whom laches or negligence is never imputed. But where a certain legacy is left, payable at a day certain, it muſt be paid with intereſt from that day. *Prec. Chan.* 161.

A father not to take a child's legacy.

Where a legacy is given to a child by a relation, a father cannot make uſe of it in the maintenance of ſuch child, but muſt provide for him out of his own pocket; nor can he ſet him out in the world, or put him out apprentice, or clerk, with the money ariſing from the legacy; and if he does, he ſhall not be allowed it. *Darley* v. *Darley*, 3 *Atk.* 399.

Legacy to infants.

Where a legacy of money or other perſonal eſtate is given to one who is an infant (under twenty-one years of age) at the teſtator's deceaſe, without appointing the legatee's age of twenty-one years, or any other certain time, for the payment of it; this legacy cannot be paid before the legatee is twenty-one years old, he not being capable before that time of giving the executor a legal diſcharge for the ſame. It is often the courſe for executors in ſuch inſtances to pay the father or guardian of the infant the legacy, in order to diſburden themſelves of the trouble of the executorſhip. This can only be ſafely done, where ſuch parent or guardian, being a perſon in good circumſtances, will ſufficiently indemnify the executor by bond againſt any future demand of the legacy by the infant, who is entitled to payment of the ſame from the executor when he comes of age, notwithſtanding ſuch former payment to his father or guardian.

Executor of his own wrong.

If a ſtranger takes upon him to act as executor, without any juſt authority (as by intermeddling with the goods of the deceaſed, and many other tranſactions), he is called in law executor of his own wrong, *de ſon tort*, and is liable to all the trouble of an executorſhip, without any of the profits or advantages: but merely doing acts of neceſſity or humanity, as locking up the goods, or burying the corpſe of the deceaſed, will not amount to ſuch an intermeddling, as will charge a man as executor of his own wrong. Such perſon cannot bring an action himſelf in right of the deceaſed, but actions may be brought againſt him. He is chargeable with the debts of the deceaſed ſo far as aſſets come to his hands; and, as againſt creditors in general, ſhall be allowed all payments made to any other creditor in the ſame or a ſuperior degree, himſelf only excepted. And though, as againſt the rightful executor or adminiſtrator, he cannot plead ſuch payment, yet it ſhall be allowed him in mitigation of damages, unleſs, perhaps, on a deficiency of aſſets, whereby the rightful executor may be prevented from ſatisfying his own debt.

As the executor of his own wrong is liable to the ſuit of the rightful executor, creditors, or legatees; ſo alſo, in caſe of his death, are his executors or adminiſtrators liable, by the ſtatute of the 30 *C. II, c.* 7, although in other caſes a perſonal wrong dies with him that did it. 4 *Burn's Eccleſ. Law*, 191. Executor of his own wrong liable to a ſuit.

An executor of his own wrong cannot diſcharge himſelf from an action brought by a creditor, by delivering over the effects to the rightful executor *after the action is brought.* Nor can he retain for his own debt of a higher nature by conſent of the rightful executor given after the bringing the action, by the creditor. *Curtis* v. *Vernon, Eaſter*, 30 *G. III.* 3 *Durnf. & Eaſt. Rep.* 587. Cannot retain for his own debt.

There are, indeed, ſeveral acts which a ſtranger may do without running the hazard of making himſelf an executor of his own wrong; ſuch as taking care of the funeral of the deceaſed, feeding his cattle, taking an inventory of his eſtate and effects, paying or diſcharging his debts or legacies with his own proper money, repairing his houſes in decay, providing neceſſaries for his children, *&c.* for theſe are to be eſteemed offices of kindneſs and charity, and not ſuch as involve him in an executorſhip. *Godolph.* 91.

An executor *de ſon tort* may do ſeveral acts which a lawful executor may do, and which ſhall be as binding as if done by a rightful executor. *Off of Exch.* 179.

And here we muſt obſerve, that regularly there cannot be an executor *de ſon tort* where there is a rightful executor, or when adminiſtration has been duly granted; for if after probate of the will, or adminiſtration granted, a ſtranger gets poſſeſſion of the deceaſed's goods, he is a treſpaſſer to ſuch executor or adminiſtrator, and may be ſued as ſuch 5 *Co.* 33. 1 *Chan. Ca.* 33. 1 *Salk.* 313.

But if a ſtranger gets poſſeſſion of the deceaſed's goods before probate of the will, he may be charged as executor *de ſon tort*, becauſe the lawful executor can be no farther charged than for the aſſets that came to his hands. 5 *G.* 33. *b.*

An executor of his own wrong is in no reſpect favoured by the law. He cannot retain the property of the inteſtate in diſcharge of his own debt, though of a ſuperior degree. *Durnf. & Eaſt.* 100. Not favoured by the law.

And he will be liable to an action, unleſs he deliver over the inteſtate's goods to the rightful adminiſtrator, *before* a ſuit be commenced againſt him. 3 *Ibid* 590.

Executory deviſes.

Favour is ſhewn with reſpect to wills in what the law calls executory deviſes, which is the limitation of a future intereſt, not to take place immediately on the death of the teſtator, but at a time and under circumſtances appointed by the will; as when a man deviſes a future eſtate to ariſe upon a contingency, and till that contingency happens does not diſpoſe of the fee-ſimple, but leaves it to deſcend to his heir at law; as if one deviſes land to a female ſole or unmarried woman and her heirs upon her day of marriage: here is in effect a contingent remainder without any particular eſtate to ſupport it; a freehold commencing *in futuro*, or at a future time. This limitation, though void in a deed, yet is good in a will by way of executory deviſe. 2 *Black Com.* 172. On the ſubject of executory deviſes much might be ſaid; but as it is a doctrine that can be underſtood only by ſuch as are well verſed in the law, unleſs fully explained, I ſhall here briefly obſerve, that an executory deviſe ſeldom happens, when the will is made with good advice and due conſideration.

Deviſe to an unborn child.

It has now been long fully ſettled, that a term for years, or any chattel intereſt, may be given by an executory deviſe to an unborn child of a perſon in exiſtence, when it attains the age of 21 years; and that the limits of executory deviſes of real and perſonal property are preciſely the ſame. *Fearne.*

If a deviſe be to the ſecond ſon then unborn, of A. B. and after his deceaſe, or acceſſion to his paternal eſtate, then to his *ſecond* ſon and his heirs male, with remainder over: Such ſecond ſon of A. B. when born, will take an eſtate in tail male by way of executory deviſe, determinable on the acceſſion of the family eſtate, and in the mean time the lands deſcend to the heir of the teſtator. 2 *Black. Rep.* 1159.

Executory deviſe to create an eſtate different from that which the law gives.

But I ſhall proceed to ſhew, that if I, by my will, create an eſtate in my heir *different* from what he would have taken by law, there the deviſe ſhall be good, the quality of the eſtate being altered, and it being indeed not the ſame eſtate as would have deſcended to him. As if I, being poſſeſſed of lands in fee-ſimple, give my ſon an eſtate-tail in thoſe lands, and after his death without iſſue deviſe it to another, here he ſhall take by the will, which confines his intereſt, and not by deſcent, by which he would have been entitled to the fee-ſimple; the intention of the teſtator being always to prevail: and here it is manifeſt that the

the ſon ſhall not have ſuch an eſtate as the law would have given him. Thoſe deviſes are alſo void and rejected where the words of the will are ſo general and uncertain that no meaning can be collected from them. And therefore where a man by will gives "*all* to his mother," theſe general words will not paſs *lands* to his mother; for ſince the heir at law has a plain and uncontroverted title, it would be ſevere and unreaſonable to ſet him aſide, unleſs the intention of the teſtator is evident from the will; for that would be to ſet up and prefer a dark, and at beſt but a doubtful title, to a clear and certain one.

If a particular eſtate is limited, and the inheritance paſſed out of the donor, this is a *contingent remainder*; but where the fee by deviſe is veſted in any perſon, and to be veſted in another upon contingency, this is an *executory deviſe:* and in all caſes of executory deviſes, the eſtates deſcend until the contingency happens. A *contract executory* conveys a thing in action; a *contract executed* conveys a thing in poſſeſſion. 2 *Black.* 443.

Executory deviſe and remainder.

An executory deviſe differs from a remainder in three very material points. 1. That it needs not any particular eſtate to ſupport it. 2. That by it a fee-ſimple, or other leſs eſtate, may be limited after a fee-ſimple. 3. That hereby a remainder may be limited of a chattel intereſt, after a particular eſtate for life created in the ſame. 2 *Black.* 172.

A bequeſt "to the moſt neceſſitous of my relations," ſhall go according to the ſtatute of diſtributions. *Ambl. Rep.* 636. 3 *Atk.* 806.

IX. *Duty of Adminiſtrators, pointing out the Operations of the Law in the Diſtribution of the Eſtates of thoſe who die Inteſtate, or without a Will.*

Of letters of adminiſtration.

If the deceaſed die wholly inteſtate, or without a will or teſtament, then general letters of adminiſtration muſt be granted by the ordinary to ſuch adminiſtrator as the ſtatutes of 31 *E. III. c.* 11, and 21 *H. VIII. c.* 5, direct; and in conſequence of which the ordinary is compellable to grant adminiſtration of the goods and chattels of the wife to the huſband, or his repreſentatives, that is, his executors or adminiſtrators, who, if the huſband die before adminiſtration taken, will be entitled in equity, and not the wife's next of kin. 2 *Black. Com.* 504. 3 *Atk.* 526.

That

That the administration of the wife's goods of right appertaineth to her husband, is confirmed by statute of 29 *C. II*, *c.* 3, which enacteth, that the statute of the 22 & 23 *C. II*, *c.* 10, (commonly called the statute of distributions) shall not extend to the estates of *femes-covert*, that is, married women, who shall die intestate; but that their husbands may demand and have administration of their rights, credits, and other personal estates, and recover and enjoy the same. But if the wife was executrix to another, then as to the goods which she had in that capacity, administration must be granted to the testator's next of kin. 3 *Salk.* 21.

Granted to the widow or next of kin.

Thus by the statutes of Edward the Third and Henry the Eighth, the ordinary is compellable to grant administration of the husband's effects to the widow, or next of kin. But he may grant it to both, or either, at his discretion. For, it being moved for a mandamus, to the official of the bishop of Gloucester, to commit administration to the widow of an intestate, the court observed, that would be to deprive the ordinary of his election, in granting it to her, or the next of kin; and therefore ordered the mandamus to be taken generally, to grant administration of the goods of the intestate. *Str.* 552.

The ordinary may grant administration jointly or separately.

The ordinary may grant administration, either jointly or separately; for he may grant several administrations of several parts of the goods of the intestate; as where a man died intestate, leaving a wife and a brother, the ordinary had granted administration of some particular debts to the brother, and the residue to the wife. It was agreed by the court, that the ordinary might grant administration to the brother, as to part, and to the wife for the rest, in which case neither could complain; since the ordinary need not have granted any part of the administration to the party complaining. But if the intestate leave a bond of 100*l.* the ordinary cannot grant administration of 50*l.* to one person, and 50*l.* to another, because this is an entire thing. 2 *Roll's Abr.* 908. 1 *Salk.* 36.

Of two or more administrators.

So if there be two or more administrators, one of them cannot sell goods, or release debts without the other's joining; for they have but one authority given them by the Bishop over the goods; which authority being given to many, is to be executed by all of them joined together. But it is otherwise in respect to co-executors; these being in law but one person, therefore the act of one is the act

of

of them all, and the poſſeſſion of one is accounted the poſſeſſion of all. *Lord Bacon's Tracts*, 162. 1 *Atk.* 460. *Swin*, 328.

Where a will is informal in its execution, with reſpect to the diſpoſition of land, as if it hath but two witneſſes to it, or if it is not ſigned by the witneſſes in the preſence of the teſtator, the law will determine the maker of it to die inteſtate, ſuch will being in fact no will at all. Different kinds of inteſtacy.

A perſon is alſo ſaid to die inteſtate, if after having made his will he revokes it, without making any other will, and ſuch revocation may ariſe from various cauſes both in fact and law, and is either expreſs or implied. Revoking a will without making another.

Before the ſtatute of *Weſtminſter* 2, the ordinary had the abſolute diſpoſal of the inteſtate's eſtate, in order that he might diſtribute it for purpoſes of charity. By that ſtatute he was permitted to retain only the reſidue, after payment of debts; but the flagrant abuſes even of that power occaſioned the legiſlature again to interpoſe, in order to prevent the ordinaries from keeping the adminiſtration any longer in their own hands, or thoſe of their immediate dependants; and therefore, by ſtatute 31 *E. III*, *c.* 11, it is provided that in caſe of inteſtacy, the ordinary ſhall depute the neareſt and moſt lawful friends of the deceaſed to adminiſter his goods; and theſe are interpreted, 9 *Co.* 39, to be the next in blood of the inteſtate, who is under no legal diſability, who are alſo by that ſtatute put upon the ſame footing, as to accounting, as executors appointed by will. Adminiſtrators therefore are only the officers of the ordinary, appointed by him in purſuance of this ſtatute. The ſtatute of 21 *H. VIII*, *c.* 5, enlarges a little the power of the eccleſiaſtical judge, and permits him to grant adminiſtration either to the widow *or* the next of kin, or to *both* of them at his diſcretion; and where two or more perſons are in the ſame degree of kindred, gives the ordinary his election to accept which he pleaſes. 2 *Black. Com.* 496. Adminiſtrators to account like executors.

The duties of an executor or adminiſtrator are in general very much the ſame, excepting, firſt, that the executor being appointed by will, is bound to perform ſuch will, which an adminiſtrator is not, unleſs where the will is annexed to his adminiſtration, and then he differs ſtill leſs from an executor: and ſecondly, that an executor may do many things before he proves the will; but an adminiſtrator can do nothing, till letters of adminiſtration are granted The duties of executors and adminiſtrators very ſimilar in many inſtances.

granted to him, the executor, as we have already ſaid, deriving his power from the will, and not from the probate; whereas that of the adminiſtrator ariſes entirely from the appointment of the ordinary.

What intitled to adminiſtration.

The ordinary is now compellable to grant adminiſtration of the goods and chattels.

Of the wife to the huſband or his repreſentatives. *Cro. Car.* 106. 1 *Peere Will* 381. And of the huſband's effects to his widow, or next of kin; but he may grant it to either or both, at his diſcretion. *Stra.* 532.

Of the wife to the huſband.

Neareſt in degree.

That amongſt the kindred of the inteſtate thoſe are to be preferred that are the neareſt in degree; but of perſons of equal degree the ordinary may take which he chuſes.

How reckoned.

That this nearneſs of degree ſhall be reckoned according to the computation of the civilians, and not of the canoniſts, becauſe in the civil computation the ſeveral degrees are numbered from the teſtator himſelf, and not from the common anceſtor, according to the rule of the canoniſts. *Prec. Chan.* 593. 2 *Vez.* 215.

Children before parents.

Firſt of all, therefore, the children, or on failure of children the parents of the deceaſed, are entitled to the adminiſtration, both which are indeed in the firſt degree; but with us the children are allowed the preference.

Brothers, &c. follow.

Then follow brothers, grandfathers, uncles, or nephews, and the females of each claſs reſpectively. 1 *Peere Will.* 40. *Prec. Chan.* 527. 1 *Atk.* 454.

And the couſins of the inteſtate are entitled to adminiſter on failure of all theſe. 2 *Black. Com.* 505.

The half blood is admitted to the adminiſtration as well as the whole, for they are equally of the kindred of the inteſtate, and only excluded from the inheritance of land: the brother of the half blood will therefore exclude the uncle of the whole blood; and the ordinary may grant adminiſtration to the ſiſter of the half blood, or the brother of the whole blood, at his diſcretion. 1 *Vent.* 425. 1 *Show.* 108. 2 *Vern.* 124.

And uncles.

Baſtard dying inteſtate.

If a baſtard dies inteſtate, without wife or iſſue, the king is entitled to his perſonal property, as adminiſtrator. 3 *Peere Will.* 33.

But, in ſuch caſes, it is uſual for the crown to grant adminiſtration to ſome relation of the baſtard's father or mother, reſerving only a tenth part, or ſome other ſmall portion. 1 *Wood.* 398.

When

When the right of adminiſtration devolves upon an infant, the ordinary is to grant adminiſtration till he arrives at the age of twenty-one; becauſe an infant cannot, before his full age, give bond to adminiſter faithfully. And as ſuch an adminiſtrator is but in nature of a curator for the infant, and has no intereſt or benefit in the inteſtate's eſtate but in the right of the infant, it has always been held diſcretionary in the ordinary to whom to grant it; and therefore it hath been frequently adjudged, that he is not obliged, within the ſtatute of Henry the Eighth, to grant it to the next of kin, either of the deceaſed or the infant. *Godolph.* 102. 1 *New Abr.* 381. Adminiſtration devolving upon an infant.

If none of the kindred will take out adminiſtration, a creditor may by cuſtom do it. *Went. Off. Exec., c.* 14. 1 *Roll's Abr.* 907.

It is not the practice to iſſue letters of adminiſtration till after the expiration of fourteen days from the death of the inteſtate; unleſs for ſpecial cauſe (as, that the goods would otherwiſe periſh, or the like) the judge ſhall think fit to decree them ſooner. On taking out letters of adminiſtration, the adminiſtrator takes an oath, which is uſually in the following form: When letters of adminiſtration are iſſued.

"You ſhall ſwear, that you believe A. B. deceaſed died "without a will; and that you will well and truly admi- "niſter all and every the goods of the ſaid deceaſed, and "pay his debts as far as his goods will extend; and that "you will exhibit a true, full, and perfect inventory of the "ſaid goods of the deceaſed, and render a true account of "your adminiſtration into the ——— court of ———, "when you ſhall be thereunto lawfully required." 4 *Burn's Eccleſ. Law*, 231.

You alſo ſwear that you are the widow, ſon, daughter, next of kin, or creditor, [*as may be the caſe*] of the ſaid A. B. and that the whole of the goods, chattels, and credits he died poſſeſſed of, do not in value exceed the ſum of *l.* "So help you God."

And by 22 & 23 *C. II, c.* 10, on granting adminiſtration, the adminiſtrator enters into a bond, with two ſureties, according to the value of the eſtate; which bonds are determined to be legal, and by which he binds himſelf to the ordinary, or perſon having power to grant ſuch adminiſtration, to make, or cauſe to be made, a true and perfect inventory of all the goods and chattels, debts, and effects, of the ſaid deceaſed, which have come, or ſhall Adminiſtrator to enter into a bond, with ſureties.

or may come, to his hands, poſſeſſion, or knowledge, or to the hands and poſſeſſion of any other perſon or perſons for his uſe; and to exhibit or ſhew the ſame inventory into the regiſtry of the court from whence the adminiſtration iſſues, within a certain time, and well and truly to adminiſter all ſuch goods and effects according to law; and alſo to make a true and juſt account of his ſaid adminiſtration, within the time mentioned in the bond, and to diſtribute the reſidue or remainder of the deceaſed's eſtate according to law; and in caſe any will ſhall appear and be proved in due form, then to relinquiſh the adminiſtration, and account with the executor.

An adminiſtrator is merely an officer of the ordinary, and therein different from an executor.

The power of an executor is founded upon the ſpecial confidence and actual appointment of the deceaſed by his will; but an adminiſtrator is merely an officer of the ordinary, preſcribed to him by act of parliament, in whom the deceaſed had repoſed no truſt at all, and whoſe power over the effects of the deceaſed ariſes from ſeveral ſtatutes made for the purpoſe, and on whoſe death it reſults back to the ordinary to appoint another: for this reaſon, the intereſt veſted in my executor, by my will, may be continued and kept alive by the will of the ſame executor; ſo that the executor of my executor is, to all intents and purpoſes, *my* executor and repreſentative, as much as the perſon whom I originally named my executor, his executor repreſenting him in the ſame manner as I appointed him to repreſent me. But the *adminiſtrator* of my executor has no privity or relation to me, being only commiſſioned to adminiſter the effects belonging to my executor himſelf, and not my goods which he had as executor; and in like manner, if I die without will, and an adminiſtrator is appointed to me, who dies and appoints an executor, ſuch executor ſhall not be my repreſentative; but in all caſes where an adminiſtrator dies, and there remain any effects of the perſon to whom he was adminiſtrator undiſpoſed of or unadminiſtered, the ordinary muſt commit the adminiſtration of ſuch unadminiſtered goods to another perſon, who is then called an adminiſtrator *de bonis non*, that is, *of the goods not* adminiſtered by a former adminiſtrator. And in ſuch caſe, this adminiſtrator *de bonis non* is the only legal and perſonal repreſentative of the deceaſed.

Adminiſtrator cannot ſue for a perſonal wrong.

An executor or adminiſtrator ſhall not charge another, or have any action againſt him for a perſonal wrong done to the teſtator, when the wrong done to his perſon, or that which

which is his, is of that nature for which damages only are to be recovered; and therefore an executor or adminiſtrator cannot ſue another for beating or wounding the deceaſed. *Shep. Touch.* 459.

In actions merely perſonal, ariſing from wrongs actually done or committed by the defendant, as treſpaſs, battery, and ſlander, the rule is, that a perſonal action dies with the perſon; and it never ſhall be revived, either by or againſt the executors, or other repreſentatives. For neither the executors of the plaintiff have received, nor thoſe of the defendant have committed in their own perſonal capacity, any manner of wrong or injury. But in actions by breach of promiſe, and the like, where the right deſcends to the repreſentatives of the plaintiff, and thoſe of the defendants have aſſets to anſwer the demand, though the ſuits ſhould abate by the death of the parties, yet they may be revived againſt, or by the executors or adminiſtrators; being indeed rather actions againſt the *property* than the *perſon*, in which the executors or adminiſtrators have now the ſame intereſt that the teſtator or inteſtate had before. 3 *Black.* 302. But he may for breach of promiſe.

By the ſtatute 22 and 23 *C. II, c.* 10, commonly called the ſtatute of diſtributions, being made in order to regulate the diſtribution of eſtates of inteſtates, *i. e.* of ſuch as died without will, it is enacted, that the remainder of the perſonal eſtates of ſuch inteſtates, after paying their debts and funeral expences, ſhall, at the expiration of one full year from the death of the inteſtate, which is allowed for the purpoſe of paying a due regard (as the ſtatute expreſſes it) to creditors, be diſtributed in the following manner; *viz.* one third part thereof ſhall go to the widow of the inteſtate, and the reſidue to be divided in equal proportions among his children; or if any of them are dead, to their legal repreſentatives, that is, their lineal deſcendants. If there are no children, or legal repreſentatives of them ſubſiſting, then one half of the eſtate ſhall go to the widow, and the other half to be diſtributed equally among all the next of kindred to the inteſtate, in equal degree, and their repreſentatives. If there is no widow, the whole eſtate goes among the children; if there is neither widow nor children, the whole of the eſtate ſhall be diſtributed among all the next of kin, *in equal degree*, and the repreſentatives of ſuch of them as may happen to be dead, if ſuch next of kin are brothers and ſiſters, but not elſe; no repreſenta- Statutes of diſtributions.

tives of other relations being admitted. The next of kindred here referred to ſhall be ſoon more particularly ſpecified.

Heir entitled with the other children.

Out of the above rule of diſtribution all ſuch children are excepted (except the heir at law) as may have had any eſtate ſettled on them by the inteſtate in his life time, or may have been advanced by him, by marriage portions or other gifts, equal to the ſhare which would be due to them under ſuch diſtribution. And if the eſtate or portion ſo given them by the inteſtate in his life-time is not equal to their diſtributive ſhare, they or their repreſentatives ſhall then be entitled to ſo much only of their father's eſtate under this ſtatute as will make the ſhares of all the children as equal as poſſible. But the eldeſt ſon and heir at law, or any other ſon who may be heir by particular cuſtom of Borough Engliſh, though he may have land by deſcent of ever ſo large a value, and though he may have had any land given him by his father, the inteſtate, in his life-time, is nevertheleſs entitled to his proportion in the inteſtate's perſonal eſtate equally with the other children. But if the heir at law has had any advancement from his father in money, he muſt, like the other children, allow for that, to make his ſhare of the eſtate equal with their's. 4 *Burn's Eccleſ Law*, 332.

Children advanced by a marriage-portion, &c.

In all caſes where children have been advanced in the father's life-time by gift of a marriage-portion or otherwiſe, and the father afterwards dies inteſtate, if this marriage-portion is not equal to the ſhare due under the ſtatute of diſtributions, the rule is, for ſuch children to allow what they have ſo received to be part of the perſonal eſtate of the deceaſed, and then to take their diſtributive ſhare out of the whole.

In reſpect to what ſhall be an advancement, ſo as to come within the meaning of the ſtatute, we may obſerve, it hath been determined, that ſmall inconſiderable ſums, occaſionally given to a child, cannot be deemed an advancement or part thereof. Thus maintenance money, or allowance made by the father to his ſon at the univerſity, or in travelling or the like, is not to be taken as any part of his advancement, this being only his education; and it would create charge and uncertainty to enquire minutely into ſuch matters. So, putting out a child apprentice, is no part of his advancement, for it is only procuring the maſter to keep him for ſeven years inſtead of the parent.

But

But the father's buying an office for the ſon, though but at will, as a gentleman penſioner's place, or a commiſſion in the army, theſe are advancements *pro tanto*, that is, for ſo much. And a proviſion made by a marriage-ſettlement, although it is in the nature of a purchaſe, is ſuch an advancement as that a child claiming a diſtributive ſhare, ſhall firſt bring the ſaid advancement into hotchpot. *Str.* 935.

This word *hotchpot* is generally underſtood to ſignify mixing and blending together, and conveys much the ſame idea as the words *collatio bonorum*, which in the civil law is anſwerable to the word *hotchpot*, and ſignifies, that if a child advanced by the father, doth, after his father's deceaſe, challenge a child's part with the reſt, he muſt caſt in all that he had formerly received, and then take out an equal ſhare with the others. The term hotchpot defined.

It is a rule, that in all caſes where there is only one perſon who is next of kin to the inteſtate, there being no other relation *in equal degree*, that perſon ſhall take the whole, as if there be but one child and no grandchildren. Where only one perſon next of kin.

Where repreſentation is allowed, all the children of ſuch deceaſed perſon, as may be entitled to a ſhare, take ſuch their parent's ſhare among them all. As if a man dies inteſtate, leaving two children, a grandchild by another of his children, and two grandchildren of another, each of his two children ſhall take one fourth part, the grandchild of one of the deceaſed children ſhall have another one fourth, and the two grandchildren of the other deceaſed child ſhall have the remaining one fourth between them. The reaſon of this being, that the grandchildren do not take this ſhare in their own right as next of kin, but as repreſentatives of their deceaſed parent, the children of the inteſtate. For if a man leaves only grandchildren, as for example, two grandchildren by one ſon, three by another ſon, and five by a daughter, there each of the grandchildren ſhall take one tenth part, becauſe they, in this caſe, claim their ſhare in their own rights as next of kin, and all are ſo in an equal degree. Where repreſentation is allowed.

Where the next of kin to an inteſtate were a grandfather by the father's ſide, and a grandmother by the mother's ſide, half of the eſtate was adjudged to each of them.

If a man dies without children, grandchildren, father, or mother, and his eſtate is divided between his brothers and ſiſters, Brothers, ſiſters, &c.

ſiſters,

ſiſters, or their children, the ſame kind of rule is adopted as in the above caſe of children and grandchildren; as if there are two brothers, one ſiſter, and three nephews and nieces (children of a deceaſed brother or ſiſter) here the two brothers and the ſiſter living each take one fourth part, and the three nephews or nieces the remaining one fourth between them, as perſonal repreſentatives of their deceaſed parent, the brother or ſiſter of the inteſtate.

Grandmother. If he has no children, grandchildren, father, mother, brothers, nor ſiſters, but a grandmother living, ſhe ſhall take the whole of the eſtate, and his uncles and aunts, if he has any, ſhall not ſhare with her, contrary to the caſe of his own mother, and brothers and ſiſters.

Uncles and nephews. If he dies leaving only uncles and aunts, and nephews and nieces, (children of a deceaſed brother or ſiſter of the inteſtate) the uncles and aunts of the inteſtate take equally with his nephews and nieces, being all his next of kin in equal degree.

Child unborn. If when a man leaves his wife with child, ſuch child, when born, ſhall have an equal ſhare with his other children, or ſuch other ſhare as it would have been entitled unto, if born and living at the time of his death; and if it is an only child, it ſhall ſhare the perſonal eſtate equally with his mother.

Cuſtoms of London and York as to diſtributions. The reader is to be apprized, that the ſtatute of diſtributions before taken notice of, expreſsly excepts the cuſtoms of the city of London, and of the province of York. It will be proper therefore, for the information of perſons reſiding within the juriſdictions of thoſe places, to explain the particular mode of diſtribution which is eſtabliſhed by the cuſtoms of theſe reſpective diſtricts: and firſt of

Cuſtom of London. The cuſtom of London, relative to the diſtribution of inteſtates effects, extends to all thoſe who are free of the city, wherever they may have died, or wherever their effects may be ſituated: and is as follows:

Widow's chamber. After payment of the funeral expences and debts of the deceaſed, and after deducting what is called the widow's chamber, that is, the apparel and bed-room furniture of the wife, the reſidue of his goods and chattels are to be diſtributed.

Wife provided for by jointure. If the wife be provided for by jointure, before marriage, ſhe ſhall, by the cuſtom of London, be barred of her cuſtomary part; but ſhe is notwithſtanding entitled to her ſhare by the ſtatute, unleſs by expreſs agreement. 1 *Vern.* 15.

If children are advanced with a ſum, leſs than their proportionable part, during their father's life, they muſt bring into *hotchpot* (with their brothers and ſiſters, but not with their mother) the money they have received, before they are entitled to their cuſtomary ſhare. 2 *Peere Wil.* 526.

If there be a widow and a child, or children;—one third to the widow, another third to the children, and the remaining third (by the ſtatute of 1 *Jac. I, c.* 17.) to the adminiſtrator, to be divided amongſt the next of kin, according to the aforeſaid ſtatute of diſtributions. 2 *Salk.* 426. Thirds.

If there be a widow but no children;—three-fourths of the inteſtate's effects ſhall go to the widow (two-fourths by the cuſtom, and one by the ſtatute) and the remaining fourth to the next of kin. 2 *Black. Com.* 518.

The cuſtom extends only to wife and children; if therefore there be neither of thoſe, his effects are to be diſtributed, according to the ſtatute of diſtributions.

N. B. By the cuſtoms of London, debts of all kinds are held to be of equal degree. 5 *Co.* 83. *Wentw. Off. Ex.* 369. No priority of debts.

The cuſtom of the province of York differs from that of London only in two material points: In the province of York, the heir at common law inheriting any lands, either in fee or in tail, is excluded from any portion of the perſonal eſtate, which he is not by the cuſtom of London. 1 *Vern.* 216. In what the cuſtoms of London and York differ.

And in the province of York, the child's ſhare is fully veſted in him immediately on the death of his father, and, in caſe of his death, will go to the repreſentatives; but, by the cuſtom of London, it does not veſt in him till he ſhall attain the age of twenty-one years; if he ſhould therefore die before he attains that age (whether married or ſingle) his part will go to his ſurviving brothers or ſiſters. 1 *Vern.* 89. 2 *Vern.* 558.

In both places, the cuſtom ceaſes on the children's attaining the age of twenty-one years, and their parts will then be diſtributable according to the ſtatute of diſtributions. When the cuſtom ceaſes.

Particular counties, cities, towns, manors, and Lordſhips, are indulged with the privilege of abiding by their own cuſtoms; which privilege is confirmed to them by ſeveral acts of parliament; thoſe cuſtoms prevail in contradiſtinction to the reſt of the nation at large. 1 *Black. Com.* 74. Cuſtom of gavelkind.

Of

Chiefly ſubſiſting in Kent.

Of thoſe cuſtoms is the cuſtom of gavelkind, chiefly ſubſiſting in Kent, though it is to be found in other parts of the kingdom. By this cuſtom, not only the eldeſt ſon of the father ſhall ſucceed to his inheritance, but all the ſons alike. And though the anceſtor may be attainted and hanged, yet the heir ſhall ſucceed to his eſtate without any eſcheat to the lord. 1 *Black. Com.* 74. *Co. Lit.* 175. 2 *Black. Com.* 84.

And by this cuſtom the huſband ſhall be tenant by the curteſy without having any iſſue; yet curteſy by the cuſtom of gavelkind, is ſubject to ſeveral diſadvantages; for it is only a moiety of the wife's land, and it ceaſes if the huſband marries again. *Co. Lit.* 30.

By the 31 *H. VIII, c.* 3, a great part of Kent is made deſcendable to the eldeſt ſon, according to the courſe of the common law; as by means of that cuſtom divers ancient and great families, after a few deſcents, came to very little or nothing. And there are ſix other ſtatutes for diſgavelling particular lands in Kent, beſides the 31 *H. VIII.* though that is the only ſtatute in print. Thoſe are mentioned in Mr. Robinſon's book on gavelkind, *page* 75.

Borough Engliſh.

Another of thoſe cuſtoms is the cuſtom that prevails in divers ancient boroughs, and therefore called Borough Engliſh, whereby the youngeſt ſon ſhall inherit the eſtate in preference to his elder brothers. 1 *Black. Com.* 75.

And there is a cuſtom in other boroughs that a widow ſhall be entitled for her dower to all her huſband's lands; whereas by the common law ſhe ſhall be endowed of one-third part only. *Ib.* Likewiſe there are ſpecial and particular cuſtoms of manors, of which every one has more or leſs, and which bind all the copy-hold and cuſtomary tenants that hold of the ſaid manors. *Ib.* Some copy-holders are for lives, one, two, or three ſucceſſively; and ſome inheritance from heir to heir by cuſtom; and cuſtom rules thoſe eſtates wholly, both for widow's eſtates, fines, heriots, forfeitures, and all other things.

Of revoking adminiſtration.

If an adminiſtration is granted, and afterwards a will is produced and proved, the adminiſtration ſhall be revoked. 2 *Rol. Abr.* 907.

In what caſe the ordinary has an election.

The ordinary cannot repeal an adminiſtration at his pleaſure. In the caſe of Sir George Sands, the father adminiſtered to his ſon, and afterwards a woman, pretending to be his ſon's wife, ſued for a repeal; but a prohibition was granted, becauſe the ordinary had an election to grant

grant it either to the father or wife, and by granting it to the father had executed his power. But where a *feme covert*, or married woman, died inteſtate, and the next of kin to her obtained adminiſtration, a prohibition was denied; becauſe in this caſe the ordinary had no power, or election to grant it to any perſon but the huſband. *Swinb.* 381. *Raym.* 93.

It appears to be the rule, that an adminiſtration may be repealed, though not arbitrarily, except where there ſhall be juſt cauſe for ſo doing; as if the adminiſtrator ſhould become infane, or the like: of which the temporal courts are to judge. So if the next of kin, at the death of the inteſtate, happens to be incapable of adminiſtering, by reaſon of attaint or excommunication, and the ordinary commits it to another; if he afterwards becomes capable, the ordinary may repeal the firſt adminiſtration, and commit it to the next of kin. *Burn's Eccleſ. L.* 236. Adminiſtration muſt not be arbitrarily repealed.

X. *General Duties and Functions of both Executors and Adminiſtrators.*

An executor, by virtue of the teſtator's will, and an adminiſtrator by virtue of his adminiſtration, have an intereſt in all the goods and chattels, whether real or perſonal, in poſſeſſion or in action of the deceaſed; and all ſuch goods and chattels which come to their hands will be *aſſets* to make them chargeable to creditors and legatees. The duties of executors and adminiſtrators over the property of the deceaſed.

N. B. Things in action are debts and other duties *due* to the teſtator, but not got into poſſeſſion. And *aſſets* are goods, *&c.* beyond what is ſufficient to pay the neceſſary funeral expences of the deceaſed.

Executors and adminiſtrators have in general the ſame remedies againſt others, for debts and duties due to the deceaſed, as he might have had if living. Except that they cannot maintain an action againſt another for any *perſonal* injury done to the deceaſed when ſuch injury is of a nature for which any damages could be recovered; for it is a rule of law, that *perſonal* actions die with the *perſon*; and, therefore, cannot be revived, either by or againſt the executors or other repreſentatives of the deceaſed; but in actions ariſing from breach of promiſe or the like, where the right deſcends to the repreſentatives of the party, though the ſuit ſhall abate by his death, yet it may be reſumed by or againſt his executors or adminiſtrators; for actions of this Executors and adminiſtrators are inveſted with the powers of the deceaſed, except in a few inſtances.

laſt deſcription are actions againſt the *property* of the deceaſed, in which the executors or adminiſtrators have the ſame intereſt that the teſtator or inteſtate had when living. *Marcn.* 4. 3 *Black. Com.* 302.

And by the 31 *Ed. III*, adminiſtrators are entitled, like executors by the common law, to every ſpecies of actions to recover debts due to the deceaſed, which he might have had before.

They may ſue for rent in arrear.

And they may ſue for rent in arrear and due to the deceaſed in his life time; and diſtrain the lands, *&c.* charged with the payment, ſo long as the ſame lands, *&c.* continue in the ſeiſin or poſſeſſion of the tenant, or of any other perſon claiming only from the ſaid tenant by purchaſe, gift, or deſcent, in like manner as their teſtator might have done if living. 32 *H. VIII*, *c.* 37.

And by the ſame ſtatute the executors or adminiſtrators of any perſon, having an eſtate in fee-ſimple, fee-tail, or for life, in any rents or fee farms which ſhall have been due and unpaid in the life-time of his wife, ſhall, in caſe of the deceaſe of the huſband, have action of debt for the arrears, or may diſtrain for the ſame, in like manner as if his wife were alive. *Ib.*

And ſo of the executors or adminiſtrators of other perſons having any rents or fee farms for terms of life. *Ib.*

Tenant for life dying.

And by 11 *G. II*, *c.* 19, it is enacted, That when the tenant for life of any lands, tenements, or hereditaments, ſhall happen to die before or on the day on which any rent was reſerved or made payable upon any demiſe of any lands, tenements, or hereditaments, which determined on the death of ſuch tenant for life, the executors or adminiſtrators ſhall, in action on the caſe, recover of ſuch tenants, or the undertenants of ſuch lands, *&c.* if the ſaid tenant for life die on the day on which the ſame was made payable, the whole, or if before ſuch day then a proportion of ſuch rent, according to the time ſuch tenant for life lived of the laſt year, or quarter of a year, or other time in which the ſaid rent was growing due.

Executors and adminiſtrators may retain their own debts.

Adminiſtrators, as well as executors, are allowed, amongſt debts of equal degree, to pay themſelves firſt, by retaining a ſufficient ſum in their hands.

And if a perſon who is indebted to another make his creditor his executor, or if ſuch creditor take out letters of adminiſtration, the law in like manner allows ſuch executor or adminiſtrator to retain ſo much of the effects of the deceaſed

ceaſed as will pay himſelf before any other creditors whoſe debts are of *equal degree*; the reaſon of which is, that an executor or adminiſtrator cannot, without an apparent abſurdity, commence an action againſt themſelves, as repreſentatives of the deceaſed, for that which is due to them in their reſpective private capacities: and if this privilege were not allowed them, they would be put in a worſe ſituation than the reſt of the creditors, becauſe, as they cannot commence any ſuit, they muſt neceſſarily be paid laſt, and would therefore, in caſes where the eſtate of the teſtator or inteſtate proves inſolvent, loſe their debt. *Plow.* 543.

But they ſhall not claim their own debt to the prejudice of thoſe of a higher degree, for the law only intends to put them in the ſame ſituation as if they had themſelves ſued and recovered their debts, which they could not have done whilſt debts of a higher degree were ſubſiſting. *Viner*, tit. *Executors* D. If of an equal degree.

Neither ſhall an executor or adminiſtrator retain his own debt, in preference to that of his co-executor or co-adminiſtrator in equal degree, but both ſhall be diſcharged in proportion. *Ibid.* 3 *Black. Com.* 18.

XI. *Of appointing Guardians.*

Formerly when a perſon died, leaving children under age, certain perſons were entitled by law to be guardians to ſuch as were heirs to real eſtates; but now the father, and he only, is authorized to appoint a guardian to ſuch children as may be under twenty-one years of age at the time of his death: and this he may do either by deed or will, to be executed in the preſence of two witneſſes: ſuch guardianſhip to continue till they are twenty-one, or for a ſhorter time. And by the 12 *C. II, c.* 24, a remedy is given to the guardian againſt any perſon who ſhall unjuſtly take away ſuch child, to recover him, and damages, for the child's benefit. This guardian has alſo the management of the child's lands, goods, and money, during his minority, for which he is to account, having all reaſonable allowances.

By the cuſtom of York, a mother may appoint a guardian to her children, as to the perſonal eſtate, but not as to the land. And in all caſes where no guardian is appointed, or if the guardians appointed die or refuſe to act, By the cuſtom of York.

their power devolves to the Lord Chancellor, he being (under the king) the ſupreme guardian of infants, and all others not capable of acting for themſelves.

Cuſtoms of London and York.

As to inteſtacy, in the main the cuſtoms of London and York agree; but there are ſome variations, and in two principal points they conſiderably differ. The one is, that in London the ſhare of the children (or orphanage part) is not fully inveſted in them till the age of twenty-one; before which they cannot diſpoſe of it by teſtament; and if they die under that age, whether ſole or married, their ſhare ſhall ſurvive to the other children. The other is, that, in the province of York, the heir at common law, who inherits any land, either in fee-ſimple, or fee-tail, is excluded from any filial portion or reaſonable part. *Prac. Chan.* 537. *Swinb.* 231.

Further cuſtoms of London.

If a father is a freeman of London, he cannot deviſe the diſpoſition of the body of his child; and, if he doth, yet the infant ſhall remain in the cuſtody of the mayor and aldermen, who are guardians to the children of all freemen of London that are under the age of twenty-one at the time of their father's deceaſe. So that if a freeman, or freewoman die, leaving orphans, within age, unmarried, the court of orphans, which is held by cuſtom time out of memory, before the lord mayor and aldermen of the city of London, ſhall have the cuſtody of their body and goods; and the executors or adminiſtrators ſhall exhibit inventories before them, and become bound to the chamberlain to the uſe of the orphans, to make a true account upon oath; and if they refuſe, they may be committed till they become bound. *Priv. Lond.* 287, 288. In caſe of inteſtacy, the ſtatute of diſtribution expreſsly excepts and reſerves the cuſtoms of the city of London, and province of York. 2 *Black.* 518.

Precedents of Wills,
&c. &c.

A WILL is to be written on paper or parchment without a ſtamp, the legiſlature wiſely conſidering that a perſon may be ſeized with a ſudden and fatal illneſs, remote from any vender of ſtamps.

Whether a will be begun with theſe words, "In the name of God, amen," or with theſe, "This is the laſt will and teſtament," is immaterial; yet the former ſeeming to be the moſt uſual method, it is here purſued. The teſtator ſhould be careful in giving a proper deſcription of himſelf, as with reſpect to his chriſtian and ſurname, his place of abode, trade, or occupation; which is uſually termed his *addition*. Women, who were never married, uſe the addition of *ſpinſter*; widows, that of *widows*; which are ſufficient without mentioning any trade or buſineſs, though they may exerciſe any ſuch. Names and additions.

Legatees ſhould alſo be properly deſcribed, as thereby they may be diſtinguiſhed from any others; and the whole will ſhould be ſo formed as to leave no room for doubt concerning the teſtator's intention.

The words, of "Sound and diſpoſing mind, *&c.*" ſeem eſſentially neceſſary to the validity of wills, and ſhould be noticed and acknowledged in every will by the teſtator. The words, "Sound and diſpoſing mind."

Where there is no time limited for paying a legacy, the executor has one year after the teſtator's death for paying it. Legacies when to be paid.

It ſhould be dated the day and year on which the teſtator ſigned it; and he ſhould put his ſeal as well as his name to the will; for though this is not required by the 29 *C. II*, even with reſpect to real eſtate, and as to perſonal eſtate, we have ſeen, that leſs formality is required in executing a will thereof, than a will whereby real eſtate is affected; and that two witneſſes are ſufficient, where the will does not concern real eſtate, yet if a man derives his power of diſpoſing from any deed, by which it is expreſſed that he will diſpoſe by writing, under his hand and ſeal, *&c.* it is neceſſary for the teſtator to ſeal his will; as by an omiſſion thereof the diſpoſition hath been held void. And it has been held, that ſealing a will is not a ſufficient ſigning

ſigning within the ſtatute; therefore, it is prudent for the teſtator both to ſign and ſeal his will.

If a married woman makes a will, in conſequence of a ſettlement or agreement, the will ſhould begin in the following form:

Will of a feme covert.

IN THE NAME OF GOD, AMEN. I Mary Nokes, wife of John Nokes, of Hampſtead, in the county of Middleſex Eſquire, do by this my writing, purporting to be my laſt will and teſtament, diſpoſe of my eſtate and effects, purſuant and according to the authority to me given and reſerved in and by a deed of ſettlement made on my marriage with the ſaid John Nokes, bearing date (and ſetting out the date of, and parties to the ſettlement, if known) and by virtue of the ſaid deed, and of all other powers and authorities whatſoever to me given or reſerved, in manner as follows: That is to ſay, I give, *&c.* as in other wills.

Will how to be executed.

When the perſon making the will executes it, he muſt, in the preſence of the witneſſes, write his name oppoſite the ſeal, (or if he has previouſly written it, he muſt acknowledge it to be his writing.)—If he cannot write, he muſt make his mark, and then ſay to the witneſſes, "I publiſh and declare this as my laſt will, and deſire you to witneſs it."

No. I.

Will of a Man, poſſeſſed of Money, Plate, Houſehold Goods, a Leaſehold Eſtate for Years; another for Years determinable on the Deaths of three Perſons named in the Leaſe; and having alſo divers Sums of Money due to him; but is not poſſeſſed of any real eſtate, giving the whole to his Wife.

IN THE NAME OF GOD, AMEN. I John Hook, of Cheapſide, in the city of London, linen-draper, being in health of body and of ſound mind, memory, and underſtanding, praiſed be God for the ſame, do make this my laſt will and teſtament in manner and form following: I give, deviſe, and bequeath, unto my beloved wife Mary Hook all my money, ſecurities for money, goods, chattels, eſtate and effects, of what nature or kind ſoever, and wheresoever the ſame ſhall be at the time of my death. AND I do nominate, conſtitute, and appoint my ſaid wife ſole executrix of this my laſt will and teſtament, hereby revoking and making void all and every other will or wills at any time heretofore by me made, and do declare this to be my laſt

last will and testament. IN WITNESS whereof I the said John Hook have hereunto set my hand and seal this day of in the year of our Lord 1800.

SIGNED, *sealed, declared, and published, by the abovenamed John Hook, as and for his last will and testament, in the presence of us, who, at his request, and in his presence, have subscribed our names as witnesses thereto.* JOHN HOOK. [Place of the Seal.]

THOMAS CROOK.
WILLIAM MARRIOT.

No. II.

Will of an unmarried Woman, or Spinster, possessed of Money, Household Goods, and other Personal Estate.

IN THE NAME of GOD, AMEN. I Sarah Singleton, of German-street, in the parish of Saint James, in the Liberty of Westminster, and County of Middlesex, spinster, being in health of body and of sound mind, memory, and understanding, praised be God for the same, do make this my last will and testament in manner and form following: FIRST, I will and desire that I may be decently buried in the parish church of Saint James aforesaid: AND I give and bequeath unto my brother John Singleton the sum of 500*l.*: ALSO, I give and bequeath unto my brother William Singleton the sum of 600*l.*: ALSO, I give and bequeath to my nephew William Singleton, son of my brother Thomas Singleton, deceased, the sum of 300*l.* to be paid to my said nephew, when he attains twenty-one years of age; and the interest thereof in the mean time to be paid and applied towards his maintenance and education, in such manner as my executor hereinafter named, shall in his discretion think fit. ALL the rest and residue of my money, goods, chattels, estate, and effects, of what nature or kind soever, I give and bequeath unto my brother James Singleton: AND I do nominate, constitute and appoint, my said brother James, sole executor of this my last will and testament; hereby revoking and making void all and every other will and wills at any time heretofore by me made, and do declare this to be my last will and testament.

To be decently buried.

Gives legacies to two brothers.

And to nephew, on his attaining the age of 21 years.

Residue to brother, whom she appoints executor.

IN

In witneſs whereof I have hereunto ſet my hand and ſeal, this day of in the year of our Lord 1800.

Signed, ſealed, &c. } SARAH SINGLETON. [Place of the Seal.]

No. III.

Will of a married Woman by Virtue of a Settlement made previous to her Marriage, diſpoſing of Perſonal Eſtate.

IN THE NAME OF GOD, AMEN. I Elizabeth Mills, now wife of John Mills, of the pariſh of Saint Margaret, Weſtminſter, in the county of Middleſex, Eſquire, late Elizabeth Field, ſpinſter, being ſick and weak in body, but of ſound and diſpoſing mind, memory, and underſtanding, praiſed be God for the ſame, do hereby, in purſuance and exerciſe of the power and authority given and reſerved to me, in and by the ſettlement made previous to my marriage with the ſaid John Mills, and by force and virtue of all and every the power and powers, authority and authorities in me being, or enabling me thereto, make my laſt will and teſtament in manner following, that is to ſay, I give and bequeath unto my beloved huſband the ſum of 200*l.* ALSO, I give and bequeath unto my brother William Field the ſum of 100*l.* ALSO, I give and bequeath unto my couſin Ann Soam, widow, the ſum of 100*l.* ALL the reſt, reſidue, and remainder of my eſtate and effects, of what kind or nature ſoever which I have or ſhall have right to diſpoſe of, I give and bequeath unto my nephew and niece, James and Mary Field, equally to be divided between them, in caſe they are both living at the time of my death; but if either of them ſhall happen to die before me, then I give and bequeath the ſhare of him or her ſo dying to the ſurvivor of them. AND I do hereby nominate, conſtitute, and appoint my brother William Field aforeſaid, ſole executor of this my laſt will and teſtament. IN WITNESS whereof I have hereunto ſet my hand and ſeal, the day of in the year of our Lord, 1800.

Mentions her marriage ſettlement.

Bequeſt to her huſband, brother, and couſin.

Reſidue to be divided between a nephew and niece.

Brother appointed executor.

Signed, ſealed, &c. } ELIZABETH MILLS. [Place of the Seal.]

No.

No. IV.

Will of a Man having a large Stock in Trade, and other Perſonal Eſtate to a conſiderable Amount; but no Real Eſtate.

IN THE NAME OF GOD, AMEN. I Thomas Jackſon, of the pariſh of Saint Martin in the Fields, in the county of Middleſex, upholſterer, being ſick and weak in body, but of ſound and diſpoſing mind, memory, and underſtanding, thanks be to God for the ſame, do make this my laſt will and teſtament in manner following: Whereas my dear and loving wife Martha Jackſon is provided for by ſettlement made on her marriage, and thereby, on my death, will, amongſt other things, be entitled to, and poſſeſſed of a dwelling-houſe, meſſuage, or tenement, ſituate and being at Knightſbridge, in the pariſh of Saint George, Hanover-ſquare, in the ſaid county of Middleſex, for the term of her life: Now, in token of the love and affection I have and bear for and towards my ſaid wife, I give and bequeath to her all the plate, linen, china, houſehold goods, and furniture of all kinds, which ſhall be in the aforeſaid dwelling-houſe at the time of my death, and alſo the ſum of 20 guineas for a ring and mourning. And I give and bequeath to my brothers, John and William Jackſon, the like ſum of 20 guineas each for a ring and mourning. ALSO, I give and bequeath unto John Jones, and Thomas Jenkins, of Knightſbridge aforeſaid, Eſquires, my executors and truſtees hereinafter named, the ſum of 60*l.* each, for the care and trouble they may have in executing this my will, and performing the truſts hereby in them repoſed. ALL the reſt, reſidue, and remainder of my plate, linen, china, houſehold goods and furniture, and all my other goods, chattels, ſtock in trade, eſtate and effects of what nature or kind ſoever, not herein-before given or bequeathed, I give and bequeath unto the ſaid John Jones and Thomas Jenkins, TO HOLD to them the ſaid John Jones and Thomas Jenkins, their executors, adminiſtrators and aſſigns, upon this ſpecial truſt and confidence nevertheleſs, that is to ſay, that they my ſaid truſtees, or the ſurvivor of them, or the executors or adminiſtrators of ſuch ſurvivor, do and ſhall, as ſoon as convenient after my death, ſell and diſpoſe thereof, and call in and receive all ſuch debts, ſum or ſums of money, as ſhall be due or owing to

Mention made that the wife is provided for by ſettlement.

Legacies to two brothers.

Legacies to executors.

Reſidue of houſehold goods, chattels, ſtock in trade, to truſtees, to place the amount out to intereſt for the ſupport, *&c.* of children till they become of age.

me at the time of my death, and place the monies arising by such sale or disposal, and the monies so to be called in and received, upon government, or other good and sufficient security, in their own names, and in such manner as they shall think proper: AND ALSO in trust, that they do and shall receive the interest and dividends thereof from time to time, as the same shall become payable, and pay, apply, and dispose of the same, or a sufficient part thereof, for and towards the maintenance, education, support, and bringing up of my son James, and my daughters Mary and Elizabeth Jackson, and such other child or children, as I shall have living, or that my said wife may be ensient with at the time of my death, until my said children shall severally and respectively attain their several and respective ages of 21 years; and when and as my said children shall severally and respectively attain their said ages of 21 years, in trust to pay, assign, transfer, and convey all the said residue of my estate and effects, with the interest, dividends, and produce thereof, as shall not have been applied for and towards the maintenance and education of my said children as aforesaid, or for putting any or either of them to business, or otherwise advancing any or either of them in life, pursuant to the power hereinafter for that purpose contained, equally unto and amongst all my said children, when and as they shall severally and respectively attain their said ages of 21 years: and in case any or either of my said children shall happen to die before having attained 21 years of age, without leaving issue of his or her body lawfully begotten; then in trust to pay, assign, transfer, and convey all the said residue of my estate and effects, and the interest, dividends, and produce thereof, or such part thereof as shall remain unapplied as aforesaid, unto such of my said children as shall live to attain his, her, or their respective age or ages of 21 years, share and share alike, if more than one. But in case any or either of my said children shall happen to die under age, leaving issue of his, her, or their body or bodies lawfully begotten; then in trust to pay, assign, transfer, and convey the part or share of such deceased child or children unto such his, her, or their issue, share and share alike (if more than one) when and so soon as they shall severally and respectively attain their several and respective ages of 21 years, and to pay and apply the interest, dividends, and produce thereof, in the mean time, for and towards their respective maintenance and education. But in

case

caſe all and every of my ſaid children ſhall happen to die under age, and without leaving iſſue of his, her, or their body or bodies lawfully begotten; then in truſt to pay, aſſign, transfer, and convey the ſaid reſidue of my eſtate and effects, and the intereſt, dividends, and produce thereof, or ſuch part thereof as ſhall remain unapplied as aforeſaid, unto my ſaid dear and loving wife Martha Jackſon. But in caſe ſhe ſhall be then dead; then in truſt, to pay, aſſign, transfer, and convey the ſame unto my aforeſaid two brothers John and William Jackſon, or ſuch one of them as ſhall be then living; and I do hereby empower and direct my ſaid truſtees to pay, aſſign, transfer, and convey the ſame accordingly. AND I do authorize and empower my ſaid truſtees, from time to time, as often as they ſhall think proper, to alter and change the ſecurities on which the ſaid reſidue of my eſtate and effects ſhall hereafter be placed out, and from time to time, as often as they ſhall think fit, again to place the ſame out upon government, or ſuch other good and ſufficient ſecurity or ſecurities, as they ſhall think proper; and I do hereby alſo authorize and empower my ſaid truſtees to apply the reſpective part or ſhare of any or either of my aforeſaid children, or the reſpective part or ſhare of any or either of their lawful iſſue (in caſe any or either of them die under age leaving iſſue as aforeſaid) of and in the ſaid reſidue of my eſtate and effects for putting any or either of my ſaid children, his, her, or their lawful iſſue out to buſineſs, or any ſuitable employ, or for ſetting him, her, or them up in buſineſs, or advancing him, her, or them reſpectively, in any employ or otherwiſe, for his, her, or their reſpective advancement in the world by marrying, or otherwiſe howſoever, any thing in this my will contained to the contrary thereof in any wiſe notwithſtanding. AND it is my will and meaning, that my ſaid truſtees, or either of them, ſhall not be liable to anſwer or make good any loſs or loſſes that ſhall or may happen to the aforeſaid reſidue of my eſtate and effects, in placing out the truſt monies according to the directions in this my will, or in tranſacting any money affairs, or otherwiſe relating to or concerning the execution of the truſts mentioned in this my will, unleſs the ſame ſhall appear to happen by or through their or either of their wilful neglect or default; nor ſhall either of them my ſaid truſtees be anſwerable or accountable for the acts, deeds, receipts, or diſburſements of the other of them; but each of them

Truſtees empowered to alter or change the ſecurities.

Truſtees indemnified againſt expences and loſſes.

shall be answerable only for his own separate acts, deeds, receipts, and disbursements: And I do hereby direct that my said trustees shall and may pay and reimburse themselves and himself out of the aforesaid residue of my estate and effects, all reasonable and necessary costs, charges, and expences whatsoever, that they or either of them shall or may bear, pay, be put unto, or sustain in or about the execution of this my will, or the trust hereby in them reposed.

Appointed executors, and guardians.

AND LASTLY, I do hereby nominate, constitute, and appoint my said trustees the said John Jones and Thomas Jenkins, executors of this my last will and testament: and I do hereby also nominate, constitute and appoint my said wife, so long as she shall continue my widow, and no longer, together with my said trustees, guardians of my aforesaid son James, and my daughters Mary and Elizabeth Jackson, and of all, any, and every such other child or children as I shall have living, or that my said wife may be ensient with at the time of my death: and do hereby revoke and make void all former and other will and wills by me at any time heretofore made, and do declare this to be my last will and testament: IN WITNESS whereof I have at the bottom of the two first sheets of this my will (the whole whereof is contained in three sheets of paper) subscribed my name, and to this third and last sheet, set my hand and seal this day of in the year of our Lord 1800.

SIGNED, sealed, &c. } THOMAS JACKSON. [Place of the Seal.]

No. V.

A Will disposing of Lands only.

IN THE NAME OF GOD, AMEN. I Thomas Styles, of Cheapside, in the city of London, gentleman, being of sound and disposing mind, memory, and understanding, do make, publish, and declare this my last will and testament, in manner and form following, that is to say, First, I give, devise, and bequeath unto Richard Fox the younger, of Cheapside aforesaid, gentleman, all those my freehold messuages, lands, tenements, hereditaments, and premises, with the appurtenances whereof I am seized in fee, situate, lying, and being at Chelmsford, in the county of Essex, and now

Devise of freehold lands to John Nokes in fee simple.

now or late in the ſeveral tenures or occupations of William Pitt, *&c.* (mentioning the names of the tenants of the premiſes) or ſome or one of them, their or ſome or one of their under tenants, or aſſigns, to have and to hold all and every the ſaid lands, tenements, and hereditaments, with the appurtenances, ſituate as aforeſaid, to him the ſaid Richard Fox, *his heirs and aſſigns, for ever.* Alſo, I give, deviſe, and bequeath to my ſecond ſon, William Styles, all that my freehold farm, lands, and premiſes, ſituate at Chelmsford aforeſaid, and now in the poſſeſſion of Richard Oatley, as tenant thereof to me, to hold the ſame farm, lands, and premiſes, unto my ſaid ſon, William Styles, for and during the term of his natural life, and from and immediately after his diſeaſe, I give, deviſe, and bequeath the ſaid farms, lands, and premiſes, to my grand-daughter, Mary Styles, her heirs and aſſigns, for ever. Alſo, I give and bequeath unto William Summer, of Iſlington, in the county of Middleſex, Eſquire, all thoſe my copyhold lands, meſſuages, tenements, and hereditaments (and which I have ſurrendered to the uſe of my will) ſituate, lying, and being at Enfield, in the county of Middleſex, and which now are, or lately were, in the tenure or occupation of Edward Fairfield, his under-tenants or aſſigns, to have and to hold the ſaid copyhold lands, meſſuages, and tenements, to the ſaid William Summer, his heirs and aſſigns, for ever, according to the cuſtom of the manor of which the ſame are holden. And I do alſo hereby give, deviſe, and bequeath unto my ſaid ſon, William Styles, all thoſe my four freehold meſſuages or dwelling-houſes, ſituate in Cheapſide, London, aforeſaid, being Nos. 11, 12, 13, and 14, and now being in the ſeveral tenures or occupations of, *&c.* (mentioning the tenants names) to have and to hold the ſame to my ſaid ſon, William Styles, and to the heirs of his body, lawfully begotten, or to be begotten; and for default of ſuch heirs, then to the right heirs of me the ſaid Thomas Styles for ever. Alſo, I give, deviſe, and bequeath unto John Luteſtring, of Cheapſide, London, mercer, and Richard Oatley, of Fleet-ſtreet, London, aforeſaid, linen-draper, all that my freehold eſtate, farm, lands, and premiſes, whereof I am ſeiſed in fee, ſituate, lying, and being at Hackney, in the county of Middleſex, and now in the tenure or occupation of Henry Symkins, as tenant to me of the ſame, under a leaſe for twenty-one years, from Lady-day, 1798, to have and to hold the ſame eſtate,

Deviſe of lands to another for life, and an executory deviſe over of the fee ſimple.

Deviſe of freeholds to one in tail.

Deviſe of copyhold lands.

Deviſes to tenants in common, and joint tenants.

eſtate, farm, lands, and premiſes, with the appurtenances, unto the ſaid John Luteſtring and Richard Oatley, (their heirs and aſſigns for ever, as tenants in common and not as joint-tenants.) *If it intended to make the deviſees joint-tenants, the words of the deviſe are to be exactly ſimilar till the beginning of the parentheſis, and then, inſtead of the words inſerted between them, ſay* [and the ſurvivor of them, his heirs and aſſigns for ever, as joint tenants, and not as tenants in common.] And as to all the reſt, reſidue, and remainder or my real and copyhold eſtates whatſoever, and whereſoever the ſame may be ſituate, lying, and being, I do hereby give, deviſe, and bequeath the ſame to my ſaid ſon, William Styles, to have and to hold the ſame to my ſaid ſon, William Styles, his heirs and aſſigns, for ever. In witneſs whereof I the ſaid Thomas Styles have, to this my laſt will and teſtament, ſet and ſubſcribed my hand and ſeal, the 20th day of March in the year of our Lord 1799.

Deviſe of the reſidue.

SIGNED, *ſealed, publiſhed, and declared, by the ſaid teſtator Thomas Styles, as and for his laſt will and teſtament, in the preſence of us, who, at his requeſt, in his preſence, and in the preſence of each other, have ſubſcribed our names as witneſſes thereto.* THOMAS STYLES. [Place of the Seal.]

JOHN WILKES.
RICHARD RIGBY.
JONATHAN WILD.

If a duplicate, or other part of the will, is executed at the ſame time, ſay, "As we have likewiſe done to a duplicate of the above written will at the ſame time."

No. VI.

Republication of the foregoing Will.

WHEREAS ſince the making and publiſhing of the above laſt will and teſtament of me the ſaid Thomas Styles, I have purchaſed divers freehold lands, meſſuages, tenements, hereditaments, and premiſes, ſituate in the ſeveral counties of Hertford and Middleſex: Now I do hereby republiſh my ſaid laſt will and teſtament, and do hereby

hereby declare that it is my desire and intention, that the said will and testament shall be good and valid, to all intents and purposes, as if the same had been this day originally made and published; any act, deed, matter, or thing whatsoever, by me heretofore done, committed, or omitted, to the contrary thereof in any wise notwithstanding. In witness whereof I have hereunto set and subscribed my hand and seal, this 1st day of May, in the year of our Lord 1799.

SIGNED *and sealed by the said testator, Thomas Styles, in the presence of us, who, at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses to the above republication of his said last will and testament.* THOMAS STYLES. [Place of the Seal.]

To be executed in the presence of, and signed by three witnesses, in the same manner as the original will.

No. VII.

A Will of Freehold, Copyhold, Leasehold, and Personal Estates; the testator devises the same to trustees to secure an Annuity to his wife, and also to provide for any children that he might have by her, and in default of issue he devises the same, subject to the Annuity, &c. to the eldest son of his uncle; charged with the payment of Monies.

IN THE NAME of GOD, AMEN. I *James Jones*, of *Charles Street*, in the county of Middlesex, Esquire, being of found and disposing mind and memory, do make this my last will and testament, in manner following: First and principally I commend my soul to God who gave it, and my body I commit to the earth, to be decently interred at the discretion of my executors hereinafter named; and as to such worldly estate as God of his goodness hath bestowed upon me, I give and dispose thereof as follows: that is to say, I give and devise unto and to the use of my dear wife, *Mary Jones*, *Nathaniel Nokes*, of, &c. and *Oliver Orme* of, &c. their heirs and assigns, all and every my freehold and copyhold estates, upon the trusts nevertheless hereinafter declared of and concerning the same; and I give, devise,

N. B. The copyhold should be surrendered to the use of the will.

deviſe, and bequeath all my leaſehold eſtates as well for lives as for years, together with all my perſonal eſtate, of what nature or kind ſoever, unto the ſaid *Mary Jones*, *Nathaniel Nokes*, and *Oliver Orme*, and their heirs, executors, adminiſtrators, and aſſigns reſpectively (according to the nature of the ſeveral eſtates) upon the truſts nevertheleſs, and to and for the ſeveral intents and purpoſes hereinafter expreſſed and declared of and concerning the ſame (that is to ſay) upon truſt, by and out of the rents, iſſues, dividends, intereſt and profits of all my ſaid eſtates, to pay an annuity or yearly ſum of five hundred pounds clear of all taxes and deductions whatſoever, into the proper hands of my ſaid dear wife *Mary Jones*, during her natural life, for her own uſe and benefit, in addition to all other proviſions made for her, upon, or previous to our intermarriage, and alſo by the ways and means aforeſaid to pay one other annuity or yearly ſum of ——— pounds, clear of all taxes and other deductions, into the proper hands of my dear ſiſter *Sarah Howell*, the wife of Mr. *Giles Howell*, during her natural life, or to ſuch perſon or perſons as ſhe ſhall from time to time, half yearly, and not otherwiſe, by any note or writing ſigned with her hand, direct or appoint to receive the ſame, and ſo as that the ſaid laſt-mentioned annuity ſhall not, nor ſhall any part thereof be ſubject, or liable to the debts, engagements, management, or controul of her huſband, nor in their or either of their power to ſell, anticipate, aſſigns, or any way to diſpoſe of or incumber the ſame, the ſaid annuities reſpectively to be paid and payable by half-yearly payments, on the feaſt days of Saint *Michael* the Archangel, and the birth of our Lord *Chriſt* in each year, by even and equal portions, the firſt payment of the ſame reſpectively to begin and be made on ſuch of the ſaid feaſt days as ſhall firſt happen after my deceaſe, and upon further truſt, that the ſaid *Nathaniel Nokes* and *Oliver Orme* ſhall and may retain the ſum of ——— pounds each, for their trouble in performing the truſts of this my will, and upon this further truſt, that they the ſaid *Mary Jones*, *Nathaniel Nokes*, and *Oliver Orme*, and the ſurvivors and ſurvivor of them, his or her heirs, executors, adminiſtrators, or aſſigns, do and ſhall at the end of one year next after my deceaſe, if there ſhall be any child or children of my body, by the ſaid *Mary* my wife then living, convey, aſſign, and transfer, in ſuch manner as counſel ſhall adviſe, all the reſt and reſidue of my

my freehold, copyhold, and leaſehold eſtates, money in the funds, and all other my perſonal eſtate and effects of what nature or kind ſoever the ſame may be, ſubject to, and charged with the payment of the ſaid ſeveral annuities of five hundred pounds, and ——— pounds as aforeſaid, or ſuch of them as ſhall be then ſubſiſting, unto my *eldeſt or only child, his or her heirs, executors, adminiſtrators, and aſſigns, abſolutely for ever*; but in caſe there ſhall not be any child living at the end of one year next after my deceaſe, ſhall and do convey, aſſign, and transfer by ſuch advice as aforeſaid, all ſuch reſt and reſidue of my freehold, copyhold, and leaſehold eſtates, money in the funds, and all other my ſaid perſonal eſtate and effects, ſubject and chargeable as herein before is mentioned unto the *eldeſt ſon* then living, of my uncle *John Jones*, of ——— eſquire, his heirs, executors, adminiſtrators, and aſſigns, abſolutely for ever, ſuch eldeſt ſon nevertheleſs paying thereout, or to the good liking of my ſaid truſtees, ſecuring to be paid thereout, unto each and every of his younger brothers, the ſum of three thouſand pounds; and I do hereby conſtitute and appoint my ſaid dear wife *Mary Jones*, the ſaid *Nathaniel Nokes*, and *Oliver Orme*, executors of this my laſt will and teſtament, hereby revolving and annulling all former and other wills by me at any time heretofore made. And my will is, and I do hereby direct, that my ſaid executors and truſtees ſhall each of them be anſwerable for her and his act and receipts only, and not the one of them for the other of them; and that they ſhall not be anſwerable for any loſs or miſcarriage by any ſecurity or ſecurities that may happen in my eſtate; and alſo that they ſhall retain all their coſts, charges, damages, and expences out of the eſtates and effects in them reſpectively veſted in and by this my will, and the truſt therein contained. IN WITNESS whereof, &c.

SIGNED, ſealed, &c. } JAMES JONES.

To be ſigned by three witneſſes.

No. VIII.

A Will by a Feme Covert, *reciting a Power given to her by her Marriage Articles. She gives all to her husband, appoints him sole executor, desires to be buried with him,* &c.

IN THE NAME OF GOD, AMEN. I *Bona Antry*, now wife of *Arthur Antry*, of London, merchant, being in good health of body, and of a sound and disposing mind and memory, (blessed be God for the same) do this first day of *May*, in the year of our Lord 1800, make and ordain this my last will and testament in manner following: Whereas in and by a certain indenture tripartite, bearing date on or about the sixth day of March 1789, and made between the said *Arthur Antry* of the first part, me the said *Bona Antry* by my then name of *Bona Brown*, of the second part, and *Charles Cray*, merchant, *Dorothy Dix*, widow, and *Edward Ellis*, apothecary, of the third part, made previous and in order to my marriage with the said *Arthur Antry* my now husband, divers leasehold messuages or tenements, grounds, hereditaments, Bank stock, and East India bonds, of me the said *Bona*, are thereby assigned and transferred, and therein recited to be transferred respectively unto the said *Charles Cray*, *Dorothy Dix*, and *Edward Ellis*, their executors, administrators, and assigns, in manner therein expressed; in trust, nevertheless for the sole and separate use and benefit of me the said *Bona Antry*, and with full and absolute power for me from time to time, notwithstanding my coverture, and whether I should be sole or married, by any writing or writings under my hand and seal attested by two or more credible witnesses, or by my last will and testament in writing, or any writing, purporting my last will and testament, to be by me signed, sealed, published, and declared, in the presence of the like number of witnesses, to dispose thereof, or any part thereof, to such person and persons, and in such proportions and manner as I should think fit; as in and by the said indenture, relation being thereunto had, may (among other things therein contained) more fully appear. Now in testimony of the sincere love and affection which I have and justly bear towards the said *Arthur Antry* my most dear and indulgent husband, and by virtue of the power and powers, authority and authorities to me reserved and given in and by the said

Marriage articles by which certain personal estates were assigned in trust for her separate use and disposal.

ſaid in part recited indenture, and of all other power and powers, authority and authorities any wife enabling me thereunto, I the ſaid *Bona Antry* do by this my laſt will and teſtament, or writing purporting my laſt will and teſtament, by me duly ſigned, ſealed, publiſhed, and declared in the preſence of the perſons whoſe names are hereunto written as witneſſes thereto, give, deviſe, bequeath, direct, limit and appoint all and every the ſaid leaſehold meſſuages, or tenements, ground, hereditaments, Bank ſtock, bonds, and premiſſes, and all other my meſſuages or tenements, ground, hereditaments, ſtock, bonds, goods, chattels, monies, and eſtate whatſoever, and whereſoever, and of what nature or kind ſoever, whereto I am entitled at law or in equity, or whereof I have any power to diſpoſe, and all my eſtate or intereſt therein, unto my kind and dearly-beloved huſband (who is moſt deſerving thereof) his heirs, executors, adminiſtrators, and aſſigns reſpectively, to and for his and their own uſe and benefit abſolutely. And I hereby direct my ſaid truſtees to convey, aſſign, and transfer the ſame and every part thereof, to him and them accordingly. Yet nevertheleſs my mind and will is, and I do hereby deſire and requeſt my ſaid dear huſband to give (out of what I have herein-before bequeathed to him) unto his daughter *Flora*, by his former wife, (in caſe he ſhall think fit, and that in his judgment ſhe ſhall prove deſerving of the ſame) the ſum of four hundred pounds of lawful money of Great Britain, to be paid to her at ſuch time or times, and in ſuch manner or proportions, and under ſuch reſtrictions in all reſpects as he ſhall direct and think may be moſt for her benefit. And I do hereby conſtitute and appoint my ſaid dear huſband *Arthur Antry* ſole and whole executor of this my laſt will and teſtament; and I earneſtly deſire of him that I may be buried where he himſelf intends to be buried, and that he would give proper directions in his will for that purpoſe in caſe he ſurvive me. And laſtly, I do hereby revoke all former and other wills by me at any time heretofore made, and do declare this only to be my laſt will and teſtament. In witneſs whereof, &c.

Deviſes the ſame to her huſband.

Requeſting a part thereof to be given to his daughter by a former wife.

She makes him ſole excutor.

BONA ANTRY.

No. IX.

Directions in a Will, that if by bad Debts or otherwiſe the Teſtator's Eſtate ſhall become inſufficient to pay Children's Legacies, they ſhall ſuſtain the Loſs equally.

AND my will further is, that in caſe the ſaid ſeveral legacies or ſums of two hundred pounds a-piece hereinbefore given and made payable to my ſaid three children in manner aforeſaid, ſhall by reaſon or on account of any debt or debts due and owing, or which hereafter may grow due and owing to my perſonal eſtate, or by any other loſſes, misfortunes, or means whatſoever my ſaid eſtate ſhall prove or become inſufficient to anſwer and pay to my ſaid three children, or any of them, their reſpective full legacies of two hundred pounds a-piece, at the times and in the manner hereinbefore directed and appointed for payment thereof, then and in ſuch caſe I do hereby order, will, direct, and appoint, that all ſuch loſſes or deficiencies ſo happening to my ſaid eſtate, ſhall be borne and ſuſtained by all and every my ſaid three children, who ſhall then be entitled to the ſaid legacies of two hundred pounds a-piece, and that in equal proportions, ſhare and ſhare alike, any thing in this my will contained to the contrary thereof in anywiſe notwithſtanding.

No. X.

A Deviſe of Tythes to a Truſtee, for the Augumentation of the Living of the Vicar or Curate of S.

Item, I give, deviſe, and bequeath unto my loving friend *M. A.* of, *&c.* Eſquire, and to his heirs and aſſigns for ever, all that my part, ſhare, and portion of tithes, of what nature, kind or quality ſoever, iſſuing and payable to me out of three ſeveral farms, ſituate and being in the pariſh of, *&c.* And all other my tithes in the hundred of *D.* aforeſaid; upon this ſpecial truſt and confidence nevertheleſs, that he the ſaid *M. A.* and his heirs, ſhall and do, from time to time, and at all times hereafter, permit and ſuffer the vicar or curate of the pariſh of *S.* for the time being, and his ſucceſſors for ever, vicars or curates of the ſaid pariſh of *S.* to receive and take the ſaid tithes, part, ſhare or portion of tithes to his and their own proper uſe, benefit and behoof for an augmentation, and for the better livelihood, proviſion and maintenance of the ſaid vicar or curate, and his ſucceſſors, vicars and curates of the ſaid pariſh of *S.* for ever.

No.

No. XI.

A Deviſe or Gift to W. College, Oxon, for the Education of one poor Scholar for ever.

Item, I give, deviſe and bequeath unto the ſaid *M. A.* and to his heirs and aſſigns for ever, all that my meſſuage or tenement, farm, lands and hereditaments, ſituate, *&c.* upon this ſpecial truſt and confidence nevertheleſs, that he the ſaid *M. A.* and his heirs, ſhall from time to time, and all times hereafter, permit and ſuffer the warden and fellows of *W.* college, in the univerſity of Oxford, for the time being, and their ſucceſſors for ever, to receive and take the rents, iſſues and profits thereof, which I direct and appoint ſhall, from time to time, and at all times hereafter, be paid and allowed for and towards the maintenance and education of a poor ſcholar of the ſaid college, for and during, and until ſuch ſcholar ſhall be bachelor of arts, or elected fellow of the houſe; and then to another poor ſcholar to be elected and choſen, which ſcholar ſhall from time to time be nominated, elected and choſen by the warden and five ſenior fellows of the ſaid college.

No. XII.

A Deviſe of 1000*l. to be applied in releaſing poor Priſoners in the Fleet or* ———; *what Sort of Priſoners are to be Objects of it.*

AND I deviſe and will, that my executors herein after-named ſhall, within four months after my deceaſe, lay out and expend the ſum of 1000*l.* in releaſing and diſcharging ſuch poor priſoners who ſhall be impriſoned at my deceaſe, in the priſons of the Fleet, or ——, or one of them, ſituate in the city of London, as my ſaid executors ſhall think fit; my ſaid executors having a regard therein to ſuch poor priſoners as have been ſober and induſtrious, and are ſo confined by reaſon of loſſes and misfortunes, and have not through idleneſs, drunkenneſs, or debauchery, fell into ſuch condition; provided nevertheleſs, that if I in my life-time, after the date of this my will, ſhall have applied or expended the ſum of 1000*l.* for the diſcharge of ſuch poor priſoners, then my ſaid executors ſhall be diſcharged from the ſaid legacy of 1000*l.* herein before given and bequeathed, and the ſame ſhall ceaſe and be void.

No.

No. XIII.

A Widow's will, whereby she devises to her Son, a Manor, Lands, &c. and Copyhold and Leasehold Estates, in trust to pay 2000l. to her married Daughter, and under several other very Special Trusts and Limitations; drawn by an eminent Counsel.

Imprimis, I give and bequeath all my manors, lands, tenements and hereditaments whatsoever, both leasehold and inheritance, unto my loving son *S. H.* his heirs, executors and administrators, according to my several and respective estates and interests therein, (excepting my messuage and farm, and all my lands, tenements and hereditaments thereunto belonging in *P.*) which said gift and devise to the said *S. H.* is upon these trusts following, *viz.* That out of the rents, issues and profits of the said premises devised unto him, or by sale thereof, he the said *S. H.* his heirs, executors or administrators, shall and do pay all my debts, funeral charges, my legacies, hereinafter by me given, and after the payment of all my debts, funeral charges, and legacies, then in trust that the said *S. H.* his heirs, executors or administrators, shall and do out of the rents, issues and profits of the said premises so devised unto him, or by sale thereof, pay the full sum of 2000*l.* of, *&c.* unto my son-in-law *W. D.* esq.; at the end of six months after he the said *W. D.* shall have attained his full age of twenty-one years, (if he shall within the said space of six months after his age of twenty-one years settle upon his wife, my daughter *E.* such a jointure of 300*l. per ann.* as shall be limited so as the profits thereof shall be at her own separate disposal and ordering, during the coverture, without her husband's controul) and in such place or places, and in such manner, and with such provisions for children, as my said son *S. A.* my cousin *R. W.* esq.; and my cousin *R. G. &c.* gent. or the survivor or survivors of them shall think fit; and in trust until the said principal sum of 2000*l.* shall become payable unto the said *W. D.* that the said *S. H.* his heirs, executors or administrators shall pay immediately after my decease, interest for the said 2000*l.* after the rate of 5*l. per cent. per ann.* unto such person and persons, and to and for such uses, intents and purposes, as my said daughter *E.* shall by any writing or writings under her hand (notwithstanding the coverture) limit and appoint, and not to her own

own hands, or to the hands of the ſaid *W. D.* or to be any way ſubject to his management or diſpoſal, but to be for the ſeparate uſe and benefit of the ſaid *E.* and if the ſaid *W. D.* ſhall happen to die before he ſhall attain the ſix months after his full age of twenty-one years, and before ſuch a ſettlement as aforeſaid made by him, then in truſt that the ſaid *S. H.* his heirs, executors, or adminiſtrators, ſhall pay the ſaid ſum of 2000*l.* unto my ſaid daughter *E.* (if ſhe ſhall be then living) together with intereſt for the ſame after the rate aforeſaid from the death of the ſaid *W. D.* until payment of the principal; and if my ſaid daughter *E.* ſhall happen to die before the end of the ſaid ſix months, and before ſuch a ſettlement made as aforeſaid, then in truſt that the ſaid *S. H.* his heirs, executors or adminiſtrators, ſhall pay the ſaid ſum of 2000*l.* with intereſt at the rate aforeſaid unto ſuch child and children of the late *E.* as ſhe ſhall leave behind her; and if ſhe ſhall leave no child or children behind, then in truſt that 1500*l.* part of the ſaid 2000*l.* be paid unto my ſaid ſon-in-law *W. D.* and the remaining ſum of 500*l.* be ſunk for the benefit and advantage of my ſaid ſon *S. H.* his heirs, executors and adminiſtrators; and if my ſaid ſon-in-law *W. D.* ſhall live to the end of the ſaid ſix months after his attainment of his full age of twenty-one years, and ſhall at the end of the ſaid ſix months fail to make ſuch a ſettlement as aforeſaid, then in truſt that my ſaid ſon *S. H.* his heirs, executors or adminiſtrators, ſhall pay the ſaid 2000*l.* and all intereſt for the ſame after the rate aforeſaid, until payment of the principal ſum, unto ſuch perſon and perſons, in ſuch parts and ſhares, and for ſuch uſes, intents and purpoſes, as my ſaid daughter *E.* by any writing or writings under her hand or ſeal, from time to time, (notwithſtanding her coverture) ſhall limit and appoint; the ſame 2000*l.* and intereſt not to be paid to her own hands, nor her huſband's hands; the ſame being in ſuch caſe deſigned by me for my ſaid daughter's ſeparate uſe and benefit, and to be no way payable to my ſaid ſon-in-law, nor to be any way ſubject to his controul, management or diſpoſal; and for want of ſuch limitation and appointment by the ſaid *E.* then in truſt, that after her death the ſaid 2000*l.* and intereſt, or ſo much thereof as ſhall not be limited and appointed away by her, ſhall be paid to and amongſt ſuch child or children as ſhe ſhall leave behind her, ſhare and ſhare alike; and if ſhe ſhall leave no child or children behind her, or if all ſuch children ſhall happen to die before any of them attain

the age of twenty-one years, or be married, then in truſt, that for want of ſuch limitation and appointment, 1500*l.* part of the ſaid 2000*l.* ſhall be paid to the ſaid *W. D.* (if he be then alive) and the reſidue of the ſaid 2000*l.* ſhall be ſunk for the benefit and advantage of the ſaid *S. H.* his heirs, executors and adminiſtrators; and if the ſaid *W. D.* ſhall not be then alive, then that the whole 2000*l.* ſhall be ſunk for the benefit of the ſaid *S. H.* his heirs, executors and adminiſtrators. *Item*, I do hereby will and deviſe that my manors and farm of —— and other pariſhes near thereunto in the county of *H.* which I hold by leaſe from *St. J's College* in *Cambridge*, and all other my manors, meſſuages, lands, tenements and hereditaments, which I have herein bequeathed unto my ſaid ſon *S. H.* ſhall ſtand and be charged and chargeable with the payment of the ſaid 2000*l.* and intereſt, and ſhall not be alienable by my ſaid ſon *S. H.* free and clear from the ſaid charge, until the ſaid 2000*l.* and intereſt ſhall be paid and ſatisfied; and if the ſaid *W. D.* ſhall fail to make ſuch a ſettlement as before mentioned, whereby to entitle himſelf to the receipt of the ſaid 2000*l.* then I deviſe and bequeath, that inſtead of the ſaid 2000*l.* to be raiſed, my ſaid manor and farm of *R.* ſhall remain and be in the hands of the ſaid *S. H.* his executors and adminiſtrators, upon the ſame truſts, and for the ſame ſeparate uſe and benefit of my ſaid daughter *E.* and her children, and with ſuch remainder over, as the before-mentioned ſum of 2000*l.* and intereſt, are limited and appointed to be; and I then alſo will and deviſe, that the ſaid manor and farm ſhall be reckoned at 1600*l.* of the ſaid 2000*l.* and the remaining ſum of 400*l.* and intereſt at the rate aforeſaid, ſhall be only raiſed out of and charged and chargeable upon the reſidue of my manors, meſſuages, lands, tenements and hereditaments; and as to my farm in *P.* in *H.* and all my meſſuages, lands, tenements and hereditaments in *P.* aforeſaid, I deviſe the ſame to the ſaid *R. W.* and *R. G.* (the truſtees) their heirs and aſſigns, upon truſt and confidence, that they the ſaid *R. W.* and *R. G.* their heirs and aſſigns, ſhall and do, from time to time, during the life of my ſaid daughter *E.* pay the rents, iſſues and profits of the ſaid premiſes ſo deviſed unto them, unto ſuch perſon and perſons, in ſuch parts and ſhares, and for ſuch uſes, intents and purpoſes, as my ſaid daughter *E.* by any writing or writings under her hand from time to time (notwithſtanding the coverture) ſhall limit

and

and appoint, and not unto her own or husband's hands, nor to be subject to any controul, management, or disposal of her husband; the same being designed by me for her separate use and benefit, and to be at her own disposal, notwithstanding the coverture; and from and after her decease, then in trust for such person and persons, and for such estate or estates, as my said daughter *E.* by any deed or writing under her hand and seal, testified by two or more credible witnesses, shall (notwithstanding the coverture) limit or appoint; and for want of such limitation or appointment, then in trust for such child or children as she shall leave at her death, and their heirs and assigns: provided that if there be more children than one son, and if the said *W. D.* shall make a settlement as aforesaid, then the eldest son shall have no part or share of the said *P.* estate; and for want of such limitation or appointment by the said *E.* (if she shall leave no child or children at her death) then in trust for my said son *S. H.* his heirs and assigns for ever. And whereas part of my estate in *P.* aforesaid is copyhold, now I do hereby declare that the gift and devise hereby made by me unto my said son *S. H.* his heirs, executors and administrators, of all my manors, messuages, lands, tenements and hereditaments whatsoever, both leasehold and inheritance (excepting as is before excepted) is upon condition, that if my said son *S. H.* or his heirs, shall not within the space of twelve months next after my decease, surrender in due form of law all the copyhold estate in *P.* aforesaid, of which I shall die seised, into the hands of the lord or lords of the manor or manors of whom the same copyhold estate is holden, unto the use of the said *R. W.* and *R. G.* and their heirs, to be subject to the trusts herein-before declared of and concerning my said *P.* estate; or if my said son *S. H.* his heirs or assigns, shall make default in payment of the above-mentioned sum of 2000*l.* and interest, according to the trusts before-mentioned; then and in either of the said cases, the said gift and devise to my said son *S. H.* his heirs and assigns shall be void; and then I give and devise the same premises so devised unto him as aforesaid, unto the said *R. W.* and *R. G.* their heirs, executors, and administrators, according to my respective estates and interests therein, upon the same trusts as herein-before declared of and concerning the same. *Item*, I will and desire, that my executors hereafter named shall permit and suffer my said

daughter *E. D.* to have the poſſeſſion only, and not the property of my beſt bed, and the furniture in my beſt room, and of all my linen, and of my diamond ring during her coverture; and if the ſaid *E.* ſhall outlive her ſaid huſband *W. D.* then I give and bequeath all the ſame goods and things unto her: but if ſhe happen to die before him, then I give and bequeath the ſame goods and things unto and amongſt ſuch child and children as ſhe ſhall leave behind her at her death; and if ſhe leaves no child at her death, then I give and bequeath the ſame goods and things unto my executor hereafter named; and as to all the reſt and reſidue of my perſonal eſtate (excepting what I have herein-before given and bequeathed) I give the ſame unto my ſaid loving ſon *S. H.* ſubject to the payment of my debts and legacies, and to the payment of the before-mentioned ſum of 2000*l.* and intereſt; and I do hereby conſtitute and appoint my ſaid loving ſon *S. H.* ſole executor of this my laſt will, *&c.*

No. XIV.

A Deviſe to erect a Charity School.

Alſo I give and deviſe all that, *&c.* to (the truſtees) to have and to hold all the laſt mentioned ——— to the ſaid (truſtees) and to their heirs and aſſigns for ever: nevertheleſs to, for and upon the ſeveral truſts, and ſubject to the ſeveral proviſoes, directions, and appointments herein after mentioned, limited, expreſſed and declared of and concerning the ſame premiſes; and I do hereby ſubject and make chargeable all and ſingular the ſame hereditaments and premiſes, to and for the ſeveral uſes, intents and purpoſes, and under and ſubject to the ſeveral proviſoes, directions and agreements hereinafter mentioned, limited, expreſſed and declared of and concerning the ſame; (that is to ſay) that they the ſaid truſtees, or the major part of them, ſhall from and immediately after my deceaſe, pay or cauſe to be paid out of my rents, iſſues and profits of the ſame premiſes, the ſum of 20*l. per ann.* clear of all manner of taxes, charges and deductions whatſoever, to the ſchool-miſtreſs hereinafter named for the time being for ever, by two equal half-yearly payments, to wit, at *Midſummer* and *Chriſtmas* yearly; the firſt of which payments to be made on ſuch of the ſaid two feaſts as ſhall next happen after my death, for the teaching and inſtruct-

ing

ing twenty of the pooreſt girls of *W.* aforeſaid for the time being, as follows, *viz.* to read, ſew, and ſay their catechiſm at ſome proper convenient place there, as my ſaid charity truſtees, or the major part of them, ſhall appoint: and my farther will is, and I do hereby appoint and direct, that if my now ſervant the ſaid *M. R.* be living at the time of my death, then the ſaid *M. R.* or ſuch other perſon as ſhe ſhall appoint, during her life, ſhall from thenceforth be the ſchool-miſtreſs to inſtruct the ſaid girls, during her life; and after her death, if the ſaid *R. D.* her ſiſter be then living, then I hereby appoint her the ſaid *R. D.* or ſuch perſon as ſhe ſhall appoint, to be the ſucceeding ſchool-miſtreſs for the ſaid girls, during her life; and after her death, if *M. B.* their niece be then living, I hereby appoint her the ſaid *M. B.* or ſuch perſon as ſhe ſhall appoint, from thenceforth to be ſucceeding ſchool-miſtreſs for the ſaid girls, during her life: and immediately after the death of the ſurvivors of them the ſaid *M. R. R. D.* and *M. B.* in caſe the ſaid *E. B.* ſiſter of the ſaid *M. B.* be then living, then I hereby appoint the ſaid *E. B.* or ſuch perſon as ſhe ſhall appoint, from thenceforth to be the ſucceeding ſchool-miſtreſs for the ſaid girls, during her life, and I do hereby further direct, that from and immediately after the deceaſe of the ſurvivors of them, the ſaid *M. R. R. D. M. B.* and *E. B.* that then every ſucceeding ſchool-miſtreſs for the ſaid ſchool, ſhall be nominated and appointed by ſuch perſon or perſons, who then for the time being ſhall by virtue of this my will be entitled to and have the property of my ſaid now dwelling houſe in *W.* aforeſaid; and my deſire is, (if by him, her or them ſo thought fit) that the wife of the then ſucceeding vicar there for the time being, ſhall be the future ſchool-miſtreſs in caſe ſhe will accept of the ſame; and my will is, that the then preſent, and every ſucceeding vicar of *W.* ſhall on the firſt *Sunday* in every month catechiſe the ſaid children with others in *W.* church aforeſaid; and that on refuſal or neglect thereof, every wife of ſuch vicar ſhall loſe the benefit of being ſchool-miſtreſs to the ſaid ſchool: and my farther will is, that the ſaid twenty poor girls, with others, ſhall be taught to ſing pſalms there by ſome proper perſon qualified for that purpoſe, who ſhall be always appointed by the vicar there for the time being; and that they the ſaid charity truſtees, or the major part of them, ſhall, out of the rents of the ſame premiſes, pay to ſuch perſon the

annual ſum of 20*l.* for his ſo doing; and alſo the farther yearly ſum of 20*s.* for pſalters and teſtaments for the uſe of the children of the ſaid ſchool; the ſame two yearly ſums of 20*l.* and 20*s.* to be paid at the ſame two feaſt-days by two equal half yearly payments, clear of all deductions, and in ſuch manner as aforeſaid: and my further will is, that every ſchool-miſtreſs of the ſaid ſchool, together with all the ſaid girls, ſhall conſtantly go to the ſaid church of *W.* twice on every *Sunday*, and there attend divine ſervice both morning and evening; and alſo on every feſtival and other days uſually kept at the ſaid church, as likewiſe on every *Thurſday* lecture preached at *W.* church, (ſickneſs and all other inevitable accidents only and always excepted); and farther, that the ſaid twenty girls, if not nominated by me before my death, ſhall be choſen by the ſaid truſtees, or the major part of them, immediately after my death, and be then fixed in the ſaid ſchool; and that if then, or at any time then after, there ſhall be wanting in *W.* aforeſaid, the full number of the ſaid twenty girls ſo intitled to have the benefit of this my charity (intending diſſenters children as well as church people); then and in every ſuch caſe, during that time only, and as often as the ſame ſhall ſo happen, my will is, that they the ſaid truſtees, or the major part of them, ſhall chuſe and make up ſuch number of girls out of ſome other pariſh or pariſhes next adjoining to *W.* aforeſaid; and farther, that no ſuch girls ſhall be admitted to the ſaid ſchool before their age of ſeven years, nor ſhall there continue after the age of fourteen years; and I do hereby direct that the ſaid charity truſtees, or the major part of them, ſhall four times in every year, *viz.* on *Chriſtmas-day*, *Lady day*, *Midſummer-day*, and *Michaelmas day*, or any other four days in each year as they ſhall think fit, have a general meeting, at ſome place in *W.* to be by them appointed, to examine into any neglects, miſcarriages or irregularities that may be committed by the ſaid ſchool-miſtreſs for the time being, or of any of the ſaid poor girls, and to make ſuch reaſonable by-laws, rules, and orders as to the ſame truſtees, or the major part of them ſhall ſeem meet, ſo as the ſame be for the good and benefit of this my charity, and be made in writing, and entered in a book for that purpoſe provided and kept for the better government and management of the ſaid ſchool, and of the ſaid miſtreſs, and twenty poor girls for the time being; and farther alſo, that for any groſs offence, miſcarriage, irregularity,

irregularity, or neglect, as shall be so judged by a majority of the said trustees, it shall and may be lawful for them to deprive, put out, and remove the said poor girls, or to suspend and put out the school-mistress of the said school for the time being, (other than and except the said *M. R. R. D. M. B.* and *E. B.* and every of them, and such person or persons whom they respectively shall appoint to officiate, during their respective lives only); and further, that the said trustees shall take and be allowed out of the rents and profits of the same premises, the yearly sum of 20*s.* and no more; the same to be expended at such their quarterly meetings yearly; and from and after payment of the several sums of 20*l.* 20*s.* 20*s.* and 20*s. per ann.* and in such manner as aforesaid, and subject thereunto: then as to all the rest and residue or surplus of the rents, issues and profits of all and singular the same hereditaments and premises, and subject, *&c.* I give, *&c.* Provided, *&c.*

No. XV.

Form of a Codicil.

Although by a Codicil any Bequests or Dispositions of a Will may be altered, new Legacies given, and other Executors appointed in the Room of those named in the Will; yet where the Alteration is of considerable Importance, it is much better to make a new Will; which is always less liable to suspicion or misinterpretation. If any real Estate is disposed of by the Codicil, it must, as well as a Will, be attested by three Witnesses.

WHEREAS I Richard Raymond, of Fleet-street, London, linen-draper, have made and duly executed my last will and testament in writing, bearing date the 10th day of March, 1783; now I do hereby declare this present writing to be a codicil to my said will, and I do direct the same to be annexed thereto, and to be taken as part thereof; and I do give and bequeath to my son, Richard Raymond, in my said will named, the further sum of 200*l.* in addition to what I have given him in and by my said will: And whereas I did in and by my said will, give and bequeath unto John Fenn, the sum of 100*l.* now I do hereby revoke

the ſaid legacy, and do give unto him, the ſaid John Fenn, the ſum of 10*l.* and no more; and I do hereby ratify and confirm my ſaid will, in all the other particulars thereof. In witneſs whereof I the ſaid Richard Raymond have, to this codicil, ſet my hand and ſeal, this 16th day of Auguſt, in the year of Lord 1800.

SIGNED, *ſealed, publiſhed, and declared, by the ſaid teſtator, Richard Raymond, as and for a codicil, to be annexed to his laſt will and teſtament, and to be taken as part thereof, in the preſence of us.* RICHARD RAYMOND. [Place of the Seal.]

Two witneſſes.

No. XVI.

A Codicil, whereby a Will is altered, and new Legacies given.

WHEREAS I John Manning, of Fleet-ſtreet, in the city of London, hoſier, have made and duly executed my laſt will and teſtament in writing, bearing date the 4th day of September, 1787, and thereby given and bequeathed the ſum of 200*l.* unto Thomas Mun: Now, I do hereby revoke and make void the ſaid legacy of 200*l.* ſo given and bequeathed by my ſaid will unto the ſaid Thomas Mun, and do give and bequeath the ſaid ſum of 200*l.* unto James Franks, of Cheapſide, London, haberdaſher; ALSO, I do revoke and make void the two ſeveral legacies of 100*l.* a-piece, given and bequeathed by my ſaid will unto Chriſtopher Ham and William Ham, and do give and bequeath unto the ſaid Chriſtopher Ham and William Ham the ſum of 40*l.* a-piece, and no more: AND I do hereby give and bequeath unto Richard Win, of Foſter-lane, London, cordwainer, the ſum of 120*l.* And I do ordain and declare this preſent writing to be a codicil to my ſaid will, and that the ſame ſhall be annexed thereto, and taken as part thereof; and do confirm my ſaid will in every particular thereof that

is

is not hereby altered or revoked: IN WITNESS whereof I have to this codicil ſet my hand and ſeal the day of in the year of our Lord 1800.

SIGNED, *ſealed, declared, and publiſhed, by the ſaid John Manning, as and for a codicil to be annexed to his laſt will and teſtament, and to be taken as part thereof, in the preſence of*

JOHN MANNING. [Place of the Seal.]

Two witneſſes.

No. XVII.

A Nuncupative Will.

THE LAST WILL of Thomas Mors, late of Rudelane, in the city of London, gentleman, deceaſed, declared by him by words of mouth the 4th day of November, 1799. [*Here inſert the words as ſpoken by the deceaſed, and conclude thus:*] Thoſe were the words ſpoken by the ſaid deceaſed Thomas Mors, in the preſence of us who have hereunto ſubſcribed our names as witneſſes thereof, this day of 1800.

Three witneſſes.

No. XVIII.

Form of an Inventory to be exhibited by the Executor or Adminiſtrator of the Goods and perſonal Eſtate of the deceaſed, purſuant to the Oath and Bond entered into at the Time of obtaining Probate or Adminiſtration.

A TRUE and perfect inventory of all the goods, chattels, wares and merchandizes, as well moveable as not moveable, and other perſonal eſtate and effects of John Doe, late of the pariſh of ———, in the county of ———, in the dioceſe of ———, gentleman, deceaſed, made by us whoſe names are hereunto ſubſcribed, the 5th day of June, in the year of our Lord 1800.

	£.	s.	d.
The purſe and wearing apparel of the ſaid deceaſed	20	0	0
200*l.* 3 per cent. conſolidated Bank annuities, in the books of the Bank of England, in the name of the ſaid deceaſed, at 55½	110	15	0
	130	15	0

Horſes

	£.	s.	d.
Brought forward,	130	15	0
Horſes and harneſs - - - -	30	0	0
Horned cattle, viz. 2 cows and 3 oxen -	40	0	0
40 Sheep - - - - - -	30	0	0
20 Swine - - - - - -	5	0	0
Poultry - - - - - -	3	3	0
Corn growing at the time of his death -	10	0	0
Hay and corn in his ſtables and outhouſes -	10	0	0
Ploughs, carts, waggons, and other implements of huſbandry - - - -	23	15	0
Plate, houſehold goods, and furniture - -	50	0	0
One leaſe for 21 years, from Lady-day, 1779, of the houſe in which the deceaſed reſided at the time of his death - - - -	20	0	0
Rent in arrear, due to the ſaid deceaſed at the time of his death, from the tenants of ſundry houſes, ſituate (&c. deſcribing them) -	35	10	0
Other debts due to the deceaſed - -	130	15	0
Total -	618	18	0
Other debts due to the deceaſed, but ſuppoſed to be irrecoverable - - - -	56	9	0

Debts owing by the deceaſed 173*l.* 10*s.*

Appraiſed by us the day and year above written,

JOHN DENN,
RICHARD FENN.

No. XIX.

A more Formal Inventory.

Form of inventory.

A TRUE, plain, perfect, and particular inventory of all and ſingular the goods, chattels, and credits of A. B. late of the pariſh of St. Auguſtine, London, deceaſed, which ſince the deceaſed's death have any ways come to the hands, poſſeſſion, or knowledge of C. D. widow, the relict and ſole executrix named in the laſt will and teſtament of the ſaid deceaſed, and were ſeen, taken, valued, and appraiſed on the thirteenth day of October, 1800, by I. C. ſworn appraiſer, and are as follows: (to wit) *(here ſtate the particular rooms, with the furniture in each,* &c.

Alſo this exhibitant doth declare, that the following goods, *viz.* one table, one elbow chair, *&c.* were appraiſed and ſold to X. Y. for the ſum of

Alſo

Alſo this exhibitant doth declare, that there was due, and owing to the deceaſed, at the time of his death, for goods ſold and delivered, the following ſums, which have ſince been received by this exhibitant, and are as follows: (to wit.)

Alſo this exhibitant doth declare, that the ſaid deceaſed was, at the time of his death, intitled in an equitable intereſt in a leaſe granted for a certain term of years, of his late dwelling-houſe, ſituate in Doctors Commons, London, which leaſe was granted to R. I. and by him aſſigned over to G. M. and intended to be a ſecurity for the principal ſum of 300*l.* which the ſaid G. M. advanced for the ſaid leaſe, towards which the ſaid deceaſed afterwards paid 50*l.* and that the ſame hath, ſince the deceaſed's death, been aſſigned over to S. D. for the ſum of 400*l.* ſo that after deducting the ſaid principal ſum of 250*l.* then remaining due, and the ſum of 10*l.* for intereſt due thereon, there remained the ſum of 140*l.* which was paid into the hands of S. Y. who inſiſts on retaining the ſame towards diſcharging the principal and intereſt now remaining due on bond.

Alſo this exhibitant doth declare, that there were due and owing to the deceaſed, at the time of his death, from the government, certain monies for drawbacks, but how much, this exhibitant cannot ſet forth.

Alſo this exhibitant doth declare, that the debts following appear upon the ſaid deceaſed's books of accompt to have been due, and owing to the ſaid deceaſed, at the time of his death, which this exhibitant believes to be deſperate and irrecoverable; and therefore proteſts againſt being charged therewith, or any part thereof.

Alſo this exhibitant doth declare, that the following debts appear upon the deceaſed's books of accompt to be due and owing to the ſaid deceaſed at the time of his death, but no part thereof has been received by this exhibitant, and that there appears to be accounts depending with many of the perſons on whom the ſaid debts are charged, and ſome other of the ſaid perſons alledge, that the ſame is not due; but if this exhibitant ſhall hereafter receive the ſame, or any part thereof, ſhe will charge herſelf therewith; till then, proteſts againſt being charged with the ſame, or any part thereof, and are as follows: (to wit.)

Laſtly, this exhibitant doth declare, that no goods, chattels, or credits of or belonging to the eſtate of the ſaid deceaſed, hath at any time ſince his death, come to her

hands, poſſeſſion, or knowledge, ſave and except what are contained in the foregoing inventory; but that if at any time hereafter, any other goods, chattels, or credits of or belonging to the eſtate and effects of the ſaid deceaſed, ſhall come to her hands, poſſeſſion or knowledge, ſhe will be ready and willing to charge herſelf therewith, and ſet forth the ſame when thereto legally called. C. D.

Declaration, inſtead of an Inventory.

Declaration inſtead of an inventory.

A declaration, inſtead of a true, plain, perfect, and particular inventory of all and ſingular the goods, chattels, and credits of A. B. late belonging to his majeſty's ſhip Jupiter, in the pay of his majeſty's navy, deceaſed, which, ſince his death, have any ways come to the hands, poſſeſſion, or knowledge of C. D. ſpinſter, the aunt, and curatrix or guardian, lawfully aſſigned to C. B. and D. B. ſpinſters, minors, the natural and lawful children, and reſiduary legatees ſubſtituted in the laſt will and teſtament of the ſaid deceaſed—Follow (to wit.)

Firſt, this declarant ſaith, that the ſaid deceaſed was a ſeaman belonging to his majeſty's ſhip Jupiter, and that ſhe hath been informed, and verily believes, that the ſum of 40*l.* is due, and owing to the eſtate of the ſaid deceaſed, for wages for his ſervice on board the ſaid ſhip.

Laſtly, this declarant ſaith, that no goods, chattels, or credits of the ſaid deceaſed, other than what are ſet forth in the foregoing declaration, have, at any time ſince his death, come to the hands, poſſeſſion, or knowledge of the declarant; but if at any time hereafter any other ſhall come to her hands, poſſeſſion, or knowledge, ſhe will be ready and willing to ſet forth the ſame. C. D.

No. XX.

Form of the Affirmation of a Quaker, to be wrote on the Back of the Will.

25th of November, 1800.

Form of affirmation of a Quaker, to be wrote on the back of the will.

I A. B. do ſolemnly, ſincerely, and truly affirm and declare, that I am one of the diſſenters from the church of England, commonly called Quakers; that I am the executor within named; that I will faithfully execute the ſame, by paying firſt the juſt debts, and then the legacies, as far as the effects will extend, and the law charge me; and I alſo affirm and declare, that I will bring in a true and

perfect inventory and account reſpecting the deceaſed's effects, when I ſhall be by law required: and that the goods, chattels, and credits of the ſaid teſtator, do not amount in value to the ſum of £.

Same day
The above named A B. made the above affirmation, or declaration.

A. B.

Before me, C. D. Surrogate.

If there ſhould appear any obliterations or interlineations in the will, it will be neceſſary that an affidavit ſhould be made as to the ſame. This affidavit muſt be annexed to the will, and a copy engroſſed, under the tranſcript before directed, to be made on parchment, and is to the following effect:

No. XXI.

20th of November, 1800.

Affidavit as to obliterations and interlineations.

Appeared perſonally, A. B. of the pariſh of St. Saviour, Southwark, in the county of Surrey, gentleman, and being ſworn on the holy Evangeliſts to depoſe the truth, made oath as follows: That he knew, and was well acquainted with C. D. late of Snow-hill, in the pariſh of St. Sepulchre, London, deceaſed; that being upon a viſit at the deceaſed's houſe, ſome time in the latter end of the year 1799, but the particular day he cannot ſet forth, the deceaſed, having an intention of making his will, did give directions to E. F. then in company, for that purpoſe, who accordingly drew the ſame, in the preſence of him the deponent, and in the preſence of the ſaid deceaſed. And the deponent ſaith, That the ſaid will was then read over to the ſaid deceaſed, by the ſaid E. F. who deſired the deceaſed to ſubſcribe his name thereto, which he then did, and delivered the ſame, as and for his laſt will and teſtament, in the preſence of him the deponent, and in the preſence of the ſaid E. F. and did requeſt the deponent, and the ſaid E. F. to ſet and ſubſcribe their names thereto, as witneſſes to the ſaid will, in manner as therein appears. And

the ſaid deponent laſtly ſaith, That he verily and in his conſcience believes the obliteration on the tenth line of the firſt ſheet of the ſaid will, and the interlineation of the words on the ſecond ſheet of the ſaid will, appearing to be made, were made before the execution thereof by the ſaid C. D.

Same day the ſaid A. B. was duly ſworn to the truth of this affidavit, } A. B.

Before me, W. W, Surrogate.

Inſtances frequently happening that perſons have wrote the whole will with their own hand, and died without having the ſame witneſſed, it is then neceſſary an affidavit as to the hand-writing ſhould be made by two perſons. A copy of this affidavit ſhould be engroſſed under the tranſcript of the will, and is to the following effect:

No. XXII.

Affidavit as to Hand-Writing.

20th of November, 1800.

Affidavit as to hand-writing.

Appeared perſonally A. B. of Snow-hill, in the pariſh of St. Sepulchre, London, gentleman, and C. D. (wife of E. F.) of Oxford-Street, in the pariſh of St. Mary-le-bone, in the county of Middleſex, and being ſeverally ſworn on the holy Evangeliſts to depoſe the truth, made oath, each for themſelves, as follows: That they knew and were well acquainted with G. H. formerly of the pariſh of St. Mary-le-bone, in the county of Middleſex, but late of the iſland of Jamaica, in the Weſt-Indies, for ſeveral years before his death, which happened ſome time ſince; alſo with his manner and character of hand-writing, having often ſeen him write, and write and ſubſcribe his name, and having now carefully viewed and peruſed the paper writing hereunto annexed, purporting to be and contain the laſt will and teſtament of the ſaid G. H. deceaſed, beginning thus: "In the name of God, Amen, I G. H. of the iſland of "Jamaica, in the Weſt-Indies, being ſound in body, and "of perfect mind and memory; and ending thus, "In "witneſs whereof I have hereunto ſet my hand, this 20th "day of October, in the year of our Lord, 1793," do ſay that they verily and in their conſciences believe the whole body,

body, series and contents of the said will, to be all of the proper hand-writing of the said deceased.

Same day the said A. B. and C. D. were duly sworn to the truth of the aforegoing affidavit. } A. B. C. D.

Before me, W. W. Surrogate.

No. XXIII.

Power of Attorney to procure Administration.

Power of attorney to procure administration

Whereas I. D. late of the parish of St. Giles in the Fields, in the county of Middlesex, gentleman, deceased, departed this life some time since intestate, leaving behind him P. D. his lawful widow and relict, and only person intitled to letters of administration of all and singular the goods, chattels, and credits of the said deceased.

NOW know all men by these presents, that I the said B. D. widow, for divers good causes and considerations me hereunto especially moving, do nominate, constitute, and appoint my good friend A. B. of Snow-hill, in the parish of St. Sepulchre, London, my true and lawful attorney for me, and in my name to appear before the Right Worshipful Sir William Wynne, knight, doctor of laws, master, keeper, or commissary of the prerogative court of Canterbury, lawfully constituted his surrogate, or some other competent judge in this behalf for me, and in my name to pray and procure letters of administration of all and singular the goods, chattels, and credits of the said deceased, to be committed and granted to him for my use and benefit; and when such letters of administration are so had, for me, and in my name, to ask, demand, sue for, recover, and receive, of and from all and every person or persons whomsoever, all such debts, dues, and effects, as shall be any ways due, owing, or belonging to the estate and effects of the said deceased, and for me and in my name to give quittances, releases, and discharges in law for the same; and further, to do and perform every other act, matter, or thing necessary to be done and performed on my part and behalf, hereby promising to ratify and confirm all and whatsoever

my

my said attorney shall lawfully do, or cause to be done in the premises, by virtue of these presents. In witness whereof I have hereunto set my hand and seal, this day of in the year of our Lord 1800.

SIGNED, *sealed, and delivered, (being first duly stamped) in the presence of* } B. D. [Place of the Seal.]

C. D.
E. F.

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